CLERK'S COPY.

Supreme Court of the United States

OCTOBER TERM, 1945

No. 303

[redacted]

vs.

DUKE DUKE CRENSHAW, INDIVIDUALLY AND AS TRUSTEES OF THE DUKE ENDOWMENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[redacted]

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

No. 5780

Doris Duke Crosswell, individually and as Trustee of the Duke Endowment,
Plaintiff-Appellee,

vs.

Township of Hillsborough, Somerset County, N. J., and Christopher G. Hogan, Collector of Taxes of the Township of Hillsborough,
Defendants-Appellants.

On Appeal From Judgment of the United States District Court for the District of New Jersey

APPENDIX TO BRIEF FOR APPELLANTS

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United States District Court

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment,

Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, N. J., CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, WILLIAM LIFGREN, W. W. DAVENPORT, JR., and ANGELO R. SORIANO, Somerset County Board of Taxation, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough,

Defendants.

CIVIL ACTION
No. 1665

Docket Entries

1941		
July	14	Complaint filed.
	14	Summons issued.
	21	Summons returned served on July 14th, filed.
	31	Consent order extending time to file answer, filed.
Aug.	27	Notice of motion for order dismissing complaint as to William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, filed.
Sept.	8	Hearing on motion for order dismissing case as to William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano. No opposition. Order signed (Fake).

Docket Entries

Sept.	8	Order dismissing complaint as to William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, filed.
	13	Answer of Township of Hillsborough, Christopher G. Horner, Collector of Taxes, Charles V. N. Davis, Assessor of Township, filed.
	16	Notice fixing place for trial filed (Newark).
Oct.	28	Notice of taking depositions, filed.
	29	Notice of motion for order staying taking of depositions and for dismissal of complaint as to Twp. of Hillsborough, G. G. Horner, Chas. V. N. Davis, filed.
	29	Notice of motion for order declaring certain tax assessments levied invalid, filed (2).
Nov.	3	Hearing on motion for order staying taking of depositions, and for dismissal of complaint as to Township of Hillsborough, G. G. Horner, Charles V. N. Davis, Hearing on motion for order declaring certain tax assessment levied invalid. Decision Reserved. Depositions may be taken in meantime (Fk).
	5	Order denying motion for stay and to limit depositions, filed.
	21	Notice of taking depositions, filed.
	24	Petition for issuances of duces tecum, filed.
	24	Order for issuance of subpoena duces tecum, filed.
	25	Notice of motion for order staying of taking of depositions, filed.

Docket Entries

Dec. 1 Hearing on motion for order staying taking of depositions. Denied (Fake).

2 Order denying motion for stay of taking depositions and of the production of documents, etc., filed.

1942

Jan. 3 Notice of taking depositions, filed.

6 Notice to take depositions, filed.

8 Notice of motion for order limiting scope of examination, and for order forbidding inquiry into certain evidence, etc., filed.

12 Hearing on motion for order limiting scope of examination, and for order forbidding inquiry into certain evidence. Court ordered that when questions are asked of plaintiff which are objectionable. Court reserved right to decide at a later time whether the question should be allowed (Fake).

15 Order touching examination of plaintiff, filed.

Feb. 9 Depositions of William Irving Frost, et al., filed.

9 Depositions of Harry McMurtry, and Chas. V. N. Davis, filed.

9 Depositions of Walter C. Linbarger, et als., filed.

9 Depositions of Christopher G. Horner, filed.

9 Depositions of Christopher G. Horner and William Lifgren, filed.

9 Depositions of William Lifgren and Edward Lindstrom, filed.

9 Depositions of Edward Lindstrom, J. Irving Stryker and Everest L. Belli, filed.

Docket Entries

Feb.	9	Depositions of Angelo R. Soriano and Wm. W. Davenport, Jr., filed.
	9	Depositions of J. Glenn Anderson, James E. Mullaney, and Alfred L. Kirby, filed.
Mar.	6	Deposition of Doris Duke Cromwell, filed.
July	30	Memorandum, filed (Fake).
Aug.	10	Order denying motion to dismiss complaint, filed.
Oct.	22	Notice of motion for leave to filed amended and supplemental complaint and for order adding additional parties defendant, filed.
	22	Proposed amended and supplemental complaint, filed.
Nov.	2	Hearing on motion for leave to file amended and supplemental complaint, and for order adding additonal defendants. Decision Reserved. Briefs to be filed in 10 days (Fake).
1943		
Apr.	28	Opinion, filed (Fake). Amendments to be allowed upon condition all parties submit to trial by jury.
May	6	Notice of motion for re-argument, filed.
	6	Affidavit of service, filed.
	10	Hearing on motion for re-argument. Decision reserved. Briefs to be submitted (Fake).
Nov.	8	Call of calendar—Case marked "ready pending motion" (Fake).
1944		
Jan.	7	Opinion, filed (Fake).
Mar.	15	Notice of Motion for Summary Judgment, filed.

Docket Entries

Feb.	15	Affidavit of Service of Motion and Affidavit, filed.
	22	Notice of Motion of Defendant, Charles C. N. Davis, Assessor of the Township of Hillsborough, for Summary Judgment, filed.
	22	Notice of motion of defendants for dismissal, filed.
	27	Hearing on motions—Briefs to be submitted in 4 weeks by both sides—Decision Reserved (Fake).
Apr.	4	Call of Calendar—Case marked "ready subject to motion."
July	5	Call of calendar—Ready (May take Judgment) (Timmerman).
	14	Opinion filed (Fk) (Judgment in favor of Chas. V. N. Davis and D. D. Cromwell, to be entered).
	19	Notice of Motion to Settle Terms of Judgment and acknowledgment of Service, filed.
	19	Affidavit of Service of Notice of Motion, filed.
	24	Hearing on motion to settle terms of Judgment—Off to 8/7/44 (Fk).
Aug.	7	Hearing on motion to settle terms of Judgment—Motion Granted. Judgment signed (Fk).
	7	Judgment dismissing complaint against defendant Charles V. N. Davis, with costs to be taxed against plaintiff Doris Duke Cromwell, and Judgment in favor of plaintiff, Doris Duke Cromwell, and against defendants, Hillsborough Township, Somerset County, N. J., and Christopher G. Horner, Collector, with costs, filed.

Docket Entries

Aug.	7	Judgment in favor of Charles V. N. Davis, defendant against Doris Duke Cromwell, plaintiff, with costs, entered.
	7	Judgment in favor of the plaintiff Doris Duke Cromwell, and against defendants, Hillsborough Township, Somerset County, N. J. and Christopher G. Horner, Collector, with costs, entered.
Nov.	4	Notice of Appeal, filed (K. & K.) Notice sent Pitney, Hardin & Ward, Esqs., attys. for appellee, and to Wm. P. Rowland, Clerk, U. S. Circuit Court of Appeals.
	4	Bond on Appeal, filed.
	13	Statement of points on appeal to U. S. C. C. A. with acknowledgment of Service, filed.
	13	Designation of Contents of Record on Appeal to U. S. C. C. A. with acknowledgment of service, filed.
	21	Designation by plaintiff of additional portions of Record on Appeal and acknowledgment of Service, filed.
Dec.	13	Transcript of Record on Appeal forwarded to Clerk, U. S. C. C. A.

Complaint

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment, *Plaintiff*, *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey; CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough; WILLIAM LIFGREN, W. W. DAVENPORT, JR., and ANGELO R. SORIANO, Somerset County Board of Taxation; and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants.*	CIVIL ACTION No. 1665 COMPLAINT

The complaint of Doris Duke Cromwell individually and as such trustee respectfully shows that:

1. Plaintiff is a natural-born citizen of the United States, residing in and an inhabitant of the Territory of Hawaii and is a citizen of said Territory.

2. Defendant, Township of Hillsborough is a municipal corporation of the State of New Jersey, located in Somerset County, in said State of New Jersey, and is one of the taxing districts of said County and is a citizen of New Jersey within the meaning of the Judicial Code.

3. Defendant, Christopher G. Horner is a citizen and resident of the State of New Jersey, residing in said Township of Hillsborough, and is and was at all times hereinafter mentioned Collector of Taxes for said Township of Hillsborough, appointed and acting pursuant to the statutes of the State of New Jersey in such case made and provided.

4. Defendants, William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, are all citizens and residents of the State of New Jersey and are now and as hereinafter mentioned were the members constituting the County Board of Taxation for the County of Somerset in New Jersey, appointed and acting under and pursuant to the statutes of said State in such case made and provided.

5. Defendant, Charles V. N. Davis, is a citizen and resident of the State of New Jersey and is and at all times hereinafter mentioned was the Assessor of the Township of Hillsborough in said Somerset County, duly appointed and acting under and pursuant to the statutes of said State in such case made and provided.

6. This is a suit of a civil nature under and by virtue of the Federal Declaratory Judgment Act of June 14, 1934 as amended August 30, 1935 (U. S. C. A., Title 28, Sec. 400) to have declared the rights and other legal relations of the interested parties. It arises under the Constitution of the United States and is also between a citizen of the Territory of Hawaii, plaintiff, and citizens of the State of New Jersey, defendants. It involves an actual controversy which must be determined between said plaintiff and said defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars

($3,000). Of said suit and controversy the District Court of the United States for the District of New Jersey has original jurisdiction for the purposes aforesaid under and by virtue of the said Federal Declaratory Judgment Act.

7. By Sec. 54:4-35 of the Revised Statutes of New Jersey it is provided that said Assessor

> "shall begin the work of making assessments upon real and personal property on October 1st in each year and shall complete the work by January 10th following, on which date he shall attend before the County Board of Taxation and file with the Board his complete assessment list, and a true copy thereof to be called the Assessor's Duplicate, properly made up and legibly written in ink, to be examined, revised and corrected by the Board as hereinafter provided."

8. Sec. 54:4-47 of the Revised Statutes of New Jersey provides:

> "The county board may adjourn from time to time in the discharge of its duties, and may, after investigation, revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not truly valued, add to the lists and duplicates any property which has been omitted or overlooked, at its true value, and in general do everything necessary for the taxation of all property in the county equally and at its true value."

9. Sec. 54:4-55 of the Revised Statutes of New Jersey provides:

"The county board of taxation shall, on or before April first in each year, cause the corrected, revised and completed duplicates, certified by it to be a true record of the taxes assessed, to be delivered to the collectors of the various taxing districts in the county, and the tax lists shall remain in the office of the board as a public record."

10. An assessment against plaintiff on account of personal property for the taxing year 1940 was made by defendant Davis as said Assessor, and the 1940 Assessment List and the duplicate thereof which included said assessment were corrected, revised and completed by the said Somerset County Board of Taxation and filed and delivered under and pursuant to the aforesaid statutes and at the times therein required, and as thus made and as thus corrected, revised and completed said assessment was for and upon a valuation of $150,000, the taxes in respect of said assessment were in the total amount of $4,680 and were duly and fully paid by plaintiff; and until the matters and things hereinafter alleged, there has never been, by notice, application, complaint, hearing, revision, correction or otherwise, any question of said assessment or any attempt to increase the same in the manner prescribed by the statute in such case made and provided, or any attempt to add omitted personal property for the taxing year 1940 by said Assessor, or by said Collector, or by the said Somerset County Board of Taxation, or by any resident or taxpayer of said Township of Hillsborough.

11. On or about November 7, 1940, while plaintiff was at her home and domicile in said Territory of Hawaii, defendant Davis, as Assessor of said Township of Hillsborough, wrote to said plaintiff a letter, directed to her at

Duke Farms, Hillsborough Township, Somerset County, New Jersey, reading as follows:

"HILLSBOROUGH TOWNSHIP
NESHANIC, NEW JERSEY

November 7, 1940

Mrs. Doris Duke Cromwell
Duke Farm
Hillsborough Township
Somerset County, New Jersey

Dear Madam:

You are hereby directed to render to me, as Assessor of Hillsborough Township, Somerset County, New Jersey, a true account of your personal property, money, effects and credits, as of the first day of October, 1940, so that I may determine and fix a proper assessment of all your personal property taxable in Hillsborough Township.

If you desire to make claim for deduction of debts or allowance of any personal property, or securities, claimed to be exempt from taxation, please take notice that such claim must be made in strict conformity with the terms and provisions of Revised Statute 54:4-15. The last day for filing such claims for exemption is January tenth (10th) of each year.

Very truly yours

s/ CHAS. V. N. DAVIS
CHAS. V. N. DAVIS
Assessor of Hillsborough Township"

12. On or about December 4, 1940, one Freeman J. Daniels, acting as attorney for plaintiff and at her direction, replied to said letter as follows:

"December 4, 1940

Mr: Charles V. N. Davis,
Assessor of Hillsboro Township,
Neshanic, New Jersey.

Dear Sir:—

In the absence of Mrs. Doris Duke Cromwell at her home in Honolulu I have for attention your letter to her of November 7th asking her to render a true account of her personal property, money, effects and credits as of the 1st day of October 1940 and saying that claims for deduction and exemption must be filed in strict accordance with Revised Statute 54:4-15 before January 10th of each year, as that is the last day for filing.

I understand that you have inspected the tangible personal property at Duke Farms near Somerville, and you are therefore familiar with all the tangible personal property located in your jurisdiction which Mrs. Cromwell owned on October 1st 1940. Mrs. Cromwell is not further taxable in your district on or with respect to any personal property she may have owned on October 1st 1940. On that date she was not a resident of the State of New Jersey. Theretofore she had removed to her home in Honolulu in the Hawaiian Islands, where she has since continued to make her residence.

Yours very truly,

FREEMAN J. DANIELS"

13. Plaintiff alleges that prior to October 1, 1940 plaintiffe deliberately and intentionally ceased to be a resident and inhabitant of said Township of Hillsborough and of said State of New Jersey, and established her residence and domicile in said Territory of Hawaii, and thereupon and thereby became and has since remained and still is a resident, inhabitant and citizen of said Territory of Hawaii, maintaining there her home and domicile. Thereby said domicile in said Territory of Hawaii became and has since remained the situs of any and all intangible personal property owned or held by said plaintiff either individually or as trustee, except as any such intangible personal property may have acquired and had a situs distinct from the domicile of plaintiff. The tangible personal property of said plaintiff which was located in said Township of Hillsborough, and only such personal property, was thereafter liable to taxation in said Township.

14. Said letter from said Assessor to said plaintiff was intended to constitute and did constitute an application of the Assessor for and with respect to the taxing year 1941 under and pursuant to Sec. 54:4-12 of the Revised Statutes of the State of New Jersey, whereby it is provided that:

> "Every inhabitant of the taxing district and every owner of personal property located in the district shall on application of the assessor, forthwith render a true account of his name and personal property, money, effects and credits, and the Assessor shall set down in a list in proper columns the name, the value of the personal estate assessed to each one, including the amount of the collectible debts due to him, except debts secured by mortgage on real estate in this State, the amount allowed by the Assessor as a deduction from such value for

debts due and owing by the taxpayer, and for exemptions, and the net value of personal property assessed to each person."

15. Said reply to said letter of said Assessor was intended to constitute and did constitute a rendition by said plaintiff of such true account in response to said application of said Assessor and it was received as such by said assessor who had theretofore inspected all tangible personal property of plaintiff in said Township.

16. An assessment against plaintiff on account of personal property for the taxing year 1941 was made by defendant Davis as said Assessor, and the 1941 Assessment List and the Duplicate thereof which included said assessment were corrected, revised and completed by the said Somerset County Board of Taxation and the Assessor's list and the duplicate showing said assessment filed and delivered under and pursuant to the aforesaid statutes and at the times therein required, and as thus made and as thus corrected, revised and completed said assessment was for and upon a valuation of $150,000; the taxes in respect of said assessment were in the total amount of $4,650, of which the sum of $2,340 was paid in equal installments on February 5, 1941 and May 7, 1941 and the residue thereof has not yet become due; and until the matters and things hereinafter alleged, there has never been, by notice, application, complaint, hearing, revision, correction or otherwise, any question of said assessment or any attempt to increase the same in the manner prescribed by the statute in such case made and provided, or any attempt to add omitted personal property for the taxing year 1941 by said Assessor, or by said Collector, or by the said Somerset County Board of Taxation, or by any resident or taxpayer of said Township of Hillsborough.

Complaint

17. Under the Statutes of New Jersey, the Somerset County Board of Taxation, after April 1, 1940, was without jurisdiction or authority to make or direct an assessment against plaintiff for the taxing year 1940 upon or with respect to any omitted personal property of plaintiff, either individually or as such trustee except upon the written complaint, with the five days notice and after the prior examination and hearing consequent upon said complaint and notice which are specified and required in Sec. 54:3-20 of the Revised Statutes of New Jersey, and said Board, after April 1, 1941, was without jurisdiction or authority to make or direct an assessment against plaintiff for the taxing year 1941 upon or with respect to any omitted personal property of plaintiff, either individually or as such trustee, except upon the written complaint, with the five days notice and after the prior examination and hearing consequent upon said complaint and notice which are specified in Sec. 54:3-20 of the Revised Statutes of New Jersey. Nor did said Somerset County Board of Taxation, after April 1 of the tax year involved, have any jurisdiction or authority, by way of said complaint and notice and prior examination and hearing, to assess a tax against plaintiff for or with respect to any omitted personal property for such tax year, unless the same was omitted by inadvertence.

18. On or about June 27, 1941, Walter C. Linbarger, Secretary of said Somerset County Board of Taxation, wrote plaintiff a letter dated June 27, 1941, addressed to said plaintiff at Duke Farms, Hillsborough Township, Somerset County, New Jersey, enclosing a certified copy of a resolution and of a certain exhibit referred to therein as Schedule A thereto annexed, adopted by said Board on June 26, 1941 for and with respect to the taxing year 1940, and also enclosing a certified copy of a resolution and a

certain exhibit referred to therein as Schedule A thereto annexed, adopted by said Board on June 26, 1941 for and with respect to the taxing year 1941. True and complete copies of said letter and of said resolutions and schedules are hereto annexed as a part hereof, marked respectively Exhibits 1, 2 and 3.

19. On or about June 27, 1941, Walter C. Linbarger, Secretary of said Somerset County Board of Taxation, wrote said plaintiff as Trustee of the Duke Endowment a letter dated June 27, 1941, addressed to said plaintiff as such Trustee at Duke Farms, Hillsborough Township, Somerset County, New Jersey, enclosing a certified copy of a resolution and of a certain exhibit therein referred to as Schedule A thereto annexed, adopted by said Board on June 26, 1941 for and with respect to the taxing year 1940, and also enclosing a certified copy of a resolution and of a certain exhibit referred to therein as Schedule A thereto annexed, adopted by said Board on June 26, 1941 for and with respect to the taxing year 1941. True and complete copies of said letter and of said resolutions and schedules are hereto annexed as a part hereof, marked respectively Exhibits 4, 5 and 6.

20. Each of said letters, besides enclosing said certified copies of resolutions and of the schedules thereto annexed as aforesaid, further stated "that the next regular meeting of said Board will be on Monday, July 14, 1941 at 10:30 A. M., D. S. T. at the Court House, Somerville, N. J."

21. An inspection of said certified resolutions shows that in and by each of them said Somerset County Board of Taxation on June 26, 1941 (when composed of defendants Lifgren, Davenport and Soriano, acting in their capacity as members of said Board), upon an application in writing made on June 16, 1941 by defendant Horner as "a resident and taxpayer of the taxing district of the Town-

ship of Hillsborough, in the County of Somerset and the duly authorized Collector of Taxes for said Township", and the proofs in support thereof, "reached its determination" and thereby did "adjudge and determine" that said plaintiff was "a resident and inhabitant of Hillsborough Township, Somerset County, New Jersey" on October 1, 1939 and October 1, 1940, that "the taxable intangible personal property held by" said plaintiff, individually and as Trustee of the Duke Endowment, on said dates had been "entirely omitted by the Assessor of Hillsborough Township from the assessment of property in said Township" for the taxing years 1940 and 1941, and thereupon said Board did by said resolutions order:

> (a) That omitted intangible personal property in the amount of $60,054,424, as appears on the schedules annexed to the certified copies of said resolutions "be and the same is hereby assessed against the said" plaintiff and "same is hereby ordered to be entered on the tax duplicate of Hillsborough Township" for each of the taxing years 1940 and 1941; and
>
> (b) That omitted intangible personal property in the amount of $161,886,014, as appears on the schedules annexed to the certified copies of said resolutions, "be and the same is hereby assessed against the said" plaintiff "as Trustee of the Duke Endowment and the same is hereby ordered to be entered on the tax duplicate of Hillsborough Township" for each of the taxing years 1940 and 1941.

22. Each of said resolutions further ordered that a certified copy thereof be furnished to the Collector of Taxes, to-wit, defendant Horner, for the said Township of Hillsborough, with direction that he enter upon the tax duplicate of said Township the said amount of taxes there-

by assessed against said plaintiff, individually and as such Trustee.

23. No notice whatever was given to or received by said plaintiff, either individually or as such Trustee, of the complaints of defendant Horner, or of any hearing thereon, or of any consideration thereof by said Somerset County Board of Taxation, or of the meeting of said Board at which the said resolutions were adopted on June 26, 1941. Said plaintiff was kept in entire ignorance of said complaints, and of any consideration thereof, and of any order upon or with respect to the same and no examination or hearing or opportunity for examination or hearing of any kind was or has been accorded plaintiff as respects said complaints, resolutions or assessments, either individually or as such trustee.

24. By reason of said resolutions and the assessments thereby made and directed, defendant Horner, as such Collector, under date of June 30, 1941, has written to said plaintiff a letter addressed to her at Somerville, New Jersey, and reading as follows:

"C. G. Horner, Collector
of
Hillsborough Township

Neshanic, N. J., R. D. 1, June 30, 1941.

Mrs. Doris Duke Cromwell
Somerville, New Jersey

Dear Mrs. Cromwell:

Enclosed please find tax bills for personal property taxes in accordance with assessment determined

and fixed by the Somerset County Board of Taxation for the taxing years of 1940 and 1941.

Please take notice that interest and penalty at the rate of 6% per annum are running from the date of this bill.

Please take further notice that this letter is a formal demand for payment of the within bill forthwith and unless payment is received accordingly, I will be obliged to proceed pursuant to law.

Very truly yours,

(signed) CHRISTOPHER G. HORNER
Christopher G. Horner
Collector
Hillsborough Township"

CGH:KS

Photostatic copies of the face and of the reverse of the said two tax bills enclosed in said letter are hereby attached as a part hereof, marked Exhibits 7, 8, 9 and 10, respectively. Said tax bills show personal liabilities of $1,873,698.02 and $1,861,687.14 against plaintiff individually for the years 1940 and 1941 respectively based on said assessments against plaintiff individually for said intangible personal property in the value of $60,054,424 for each of the taxing years 1940 and 1941, making a total personal liability of said plaintiff individually for said two years of $3,735,385.16 by reason of said resolutions and the assessments therein against her individually.

25. By reason of said resolutions and the assessments thereby made and directed, defendant Horner, as such Collector, under date of June 30, 1941 has written to said plaintiff as Trustee of the Duke Endowment a letter ad-

dressed to her as such trustee at Somerville, New Jersey, and reading as follows:

"C. G. HORNER, Collector
of
Hillsborough Township

Neshanic, N. J., R. D. 1 June 30, 1941.

Mrs. Doris Duke Cromwell
Trustee of The Duke Endowment
Somerville, New Jersey

Dear Mrs. Cromwell:

Enclosed please find tax bills for personal property taxes in accordance with assessment determined and fixed by the Somerset County Board of Taxation for the taxing years of 1940 and 1941.

Please take notice that interest and penalty at the rate of 6% per annum are running from the date of this bill.

Please take further notice that this letter is a formal demand for payment of the within bill forthwith and unless payment is received accordingly, I will be obliged to proceed pursuant to law.

Very truly yours,

(signed) CHRISTOPHER G. HORNER
Christopher G. Horner
Collector
Hillsborough Township"

CGH:KS

Photostatic copies of the face and of the reverse of the said two tax bills enclosed in said letter are attached as

a part hereof, marked Exhibits 11, 12, 13 and 14, respectively. Said tax bills show liabilities of $5,050,843.63 and $5,018,466.43 against plaintiff as such trustee for the years 1940 and 1941 respectively, based on said assessments against plaintiff as such trustee for said intangible personal property in the value of $161,886,014 for each of the taxing years 1940 and 1941, making a total liability of said plaintiff as such trustee for said two years of $10,069,310.06 by reason of said resolutions and the assessments therein against her as such trustee.

26. Plaintiff alleges that although the letters from said Secretary enclosing certified copies of the said resolutions stated that the next regular meeting of said Somerset County Board of Taxation would be held in Somerville, New Jersey, on July 14, 1941, said Somerset County Board of Taxation intended and considered said resolutions, and each of them, as constituting final determinations and assessments, and said Board by said letters or otherwise did not intend to suspend the collection of the taxes that might be owing in respect of said assessments or to afford plaintiff any opportunity to be heard before said assessments became final; that long before the time set for such meeting defendant Horner, as such Collector, demanded payment of and thereby attempted to collect the taxes in respect of said assessments made in and by said resolutions and threatened the pains and penalties of the law for nonpayment thereof. Thus and thereby said Collector under and pursuant to the said resolutions of said Board, with the knowledge and approval of said Board, is treating each determination and assessment in and by each of said resolutions as a final determination and assessment, notwithstanding the statements of said letters as to the time and place of the next regular meeting of said Board, and is

treating the taxes assessed as directed by said resolutions as such liability of plaintiff, individually and as such trustee, as aforesaid and as due and owing and subject to interest and giving rise to the remedies of distraint and sale, and arrest and imprisonment as hereinafter set forth.

27. By the terms of Sec. 54:4-1 of the Revised Statutes of New Jersey any person "assessed for personal property shall be personally liable for the taxes thereon"; by virtue of said section an assessment for taxes upon and with respect to personal property, including an assessment for omitted personal property, constitutes the imposition at the time of said assessment of a personal liability upon the owner of said personal property who is assessed with taxes upon and with respect thereto.

By Sec. 54:4-80 a copy of the entry of the tax thus assessed upon and with respect to personal property, certified by the Collector to be a true copy taken from his duplicate, "shall be a sufficient warrant for the distress and sale or arrest and imprisonment authorized by Secs. 54:4-78 and 54:4-79 of this Title".

By Sec. 54:4-78 the Collector is authorized, in case of failure to pay a tax assessed upon or with respect to personal property when the same becomes due to enforce the payment thereof "by distress and sale of any of the goods and chattels" of the person liable for such tax.

By Sec. 54:4-79 if goods and chattels of the person liable for the tax on personal property cannot be found, or are not sufficient to make all the money required for the payment of such tax, "the Collector may in person or by deputy take the body of the delinquent and unless the tax is at once paid with costs, deliver him to the sheriff or jailer of the county, to be kept in close and safe custody" until payment be made, with costs.

28. Sec. 54:3-20 of the Revised Statutes of New Jersey provides that "on the written complaint of the Collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the County Board, on five days' notice in writing to the owner by the party complaining and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing, a transcript whereof shall be furnished by the Board to the Collector, who shall amend his duplicate accordingly."

29. While the assessments purported to be made by said resolutions were upon, and initiated by, the written complaints of defendant Horner as a resident and taxpayer of the taxing district of said Township of Hillsborough and as the duly authorized Collector of Taxes for said Township, and each of said resolutions so recites, and further recites that after consideration of the said complaints and due inquiry and examination the Board reached its determinations and adjudged and determined as therein set forth, plaintiff alleges that there was a total lack of compliance with the requirements of Sec. 54:3-20 in that there was not given to plaintiff either individually or as such trustee the five days' notice in writing, and there did not occur the hearing specified and required by said Sec. 54:3-20 for the addition of omitted property. On account of such failure to give the notice and to accord and have the hearing specified and required by said Sec. 54:3-20; said Somerset County Board of Taxation was wholly without jurisdiction in the premises, and the said orders, entered on June 26, 1941 and each of the same are totally invalid and of no effect.

30. Each of said orders purports to assess plaintiff individually or as Trustee with a tax upon and with respect to intangible personal property solely by reason of the alleged residence of said plaintiff within said Township of Hillsborough on October 1, 1939 and October 1, 1940. No one of said resolutions finds or determines or purports to find or determine that the said intangible personal property or any part thereof had a location or situs of its own in said Township of Hillsborough on said dates or at any other time. Plaintiff alleges that none of the said intangible personal property has at any time had a location or situs of its own in said Township.

31. No one of said resolutions finds or determines, or purports to find or determine, that plaintiff was an inhabitant of said Township of Hillsborough or of the State of New Jersey on June 26, 1941, when said Somerset County Board of Taxation attempted through and by means of the resolutions entered by it on said day to impose such liabilities upon plaintiff, individually or as such Trustee, by way of said assessments upon and with respect to said intangible personal property as set forth in said resolutions.

32. By reason of the aforesaid facts and circumstances said Somerset County Board of Taxation was without jurisdiction or authority on June 26, 1941 in and by said resolutions or any of them or otherwise to impose upon the plaintiff, either individually or as Trustee of the Duke Endowment, any such liabilities through said attempted assessments upon or with respect to said intangible personal property or otherwise, and the said attempt in and by said resolutions and each of them to assess said taxes and thereby impose such liabilities upon said plaintiff, either

individually or as such Trustee, was and is an attempt to extend the taxing jurisdiction and power of said Board beyond the territorial limits of the Township of Hillsborough and of the County of Somerset and of the State of New Jersey and to tax persons and personal property and things, and such plaintiff although a non-resident as aforesaid individually and as such trustee upon and with respect to persons, personal property and things, wholly beyond the jurisdiction and taxing power of said Township, County and State, and said attempt and said purported assessments were in contravention of the due process clause of the 14th Amendment to the Federal Constitution and a denial to plaintiff, individually and as such Trustee, of the due process of law secured to her thereby, and on that account said resolutions and the purported assessments therein set forth and each of them are wholly unconstitutional, invalid and void.

33. Said Duke Endowment is a common law trust created by James B. Duke by written indenture dated the 11th day of December 1924 and executed and delivered by him on that day and is devoted exclusively to charitable purposes.

Under the terms of said indenture all of the corpus of said trust is held exclusively for, and all of the incomes, revenues and profits of said trust must be utilized exclusively for, charitable, benevolent, religious and hospital purposes within the States of North Carolina and South Carolina, and should said funds prove more than sufficient for that purpose then for such purposes in other States of the United States, preferring those contiguous to said States of North Carolina and South Carolina.

Said trust is administered by a self-perpetuating Board of fifteen Trustees under and in accordance with the terms

of said indenture and the by-laws authorized of said indenture, which have been adopted by said Board for that purpose. Since plaintiff became 21 years of age she has been one of said Trustees, but she has never had, and does not now have, any personal or beneficial interest in either the corpus or the incomes, revenues and profits of said Duke Endowment and she does not now have, nor has she ever had, any possession or custody or control of the securities or personal property of said Duke Endowment, or any part thereof, or the evidences thereof, or any right to bring or cause to be brought the said properties or any part thereof or the evidences thereof into her possession, custody or control.

Said Board of Trustees under and in accordance with the terms of said indenture and said by-laws acts through meetings held at stated periods, at which a quorum must be present and a majority vote of those present prevails. According to the terms of said indenture and said by-laws said Board of Trustees has a Chairman, two Vice-Chairmen, a Secretary, and a Treasurer, none of which offices has ever been held by plaintiff.

The Treasurer of said trust is a Trustee of said Endowment and has been a Trustee and such Treasurer since the creation of said trust. By the terms of said by-laws all of the securities and other intangible personal property, and the evidences thereof, of said trust are committed, and from the creation of the trust have been committed, to the possession, custody and keeping of said Treasurer, who is now, and since the creation of said trust has been, a resident and inhabitant of the State of New York. In said State of New York during the whole period of the existence of said Duke Endowment said Treasurer has kept and does now keep all of said securities and personal prop-

erty of the Duke Endowment and all the evidences thereof in his control, custody and possession under and pursuant to said by-laws. None of said securities or personal property or the evidences thereof has ever been in the State of New Jersey.

Under and in accordance with said indenture and said by-laws at least ten meetings of said Board of Trustees must be held in each calendar year and said meetings are held alternately at the executive offices of said Duke Endowment, which are and from the creation of said Endowment have been in the City of New York in the State of New York and in the City of Charlotte in the State of North Carolina. No meeting of the Board of Trustees has ever been held in the State of New Jersey. All actions required and taken for the acquisition or disposition of securities and personal property or of the incomes, revenues and profits of said trust must be, and always have been, taken at said meetings of said Board of Trustees.

By reason of the foregoing facts said securities and personal property of and belonging to said Duke Endowment and the evidences thereof have, and always have had, since the creation of said trust, a distinct and permanent location and legal situs outside of the State of New Jersey and in the State of New York where the same have been constantly kept in the custody, control and possession of the Treasurer of said trust under and in accordance with said indenture and said by-laws, and none of them has ever had a location or situs within said State of New Jersey or within any taxing district thereof; and therefore the attempt of said Somerset County Board of Taxation in and by said resolutions of June 26, 1941 to assess taxes against said plaintiff as Trustee of said Endowment for the tax years 1940 and 1941 upon and with respect to intangible

personal property belonging to said Duke Endowment was and is an attempt to extend the taxing jurisdiction and power of said Board beyond the territorial limits of the Township of Hillsborough, and of the County of Somerset and of the State of New Jersey and to tax personal property and things, and said plaintiff as such Trustee upon and with respect to personal property and things, wholly beyond the jurisdiction and taxing authority of said Township of Hillsborough, of said Somerset County, and of the State of New Jersey, and said attempt and said purported assessments are in contravention of the due process clause of the 14th Amendment to the Constitution of the United States and a denial of the due process of law secured thereby and wholly unconstitutional, invalid and void.

34. Art. IV, Sec. 7, Par. 12, of the Constitution of the State of New Jersey provides:

> "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

The General Tax Act of the State of New Jersey entitled "An Act for the Assessment and Collection of Taxes" (R. S. 54:4-1) provides:

> "All property, real and personal, within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this Chapter shall be subject to taxation annually under this Chapter at its true value, and shall be valued by the Assessors of the respective Taxing Districts * * *."

Sec. 54:4-48 of the Revised Statutes of the State of New Jersey provides:

"The county board of taxation shall enter all changes or additions on the various tax lists and duplicates, and, upon ascertaining the total amount of tax to be raised, fix and adjust the amount of state school, state and county tax to be levied in each taxing district in the county in proportion to the respective values thereof, and the amount to be levied in each taxing district for local purposes as certified to it. It shall cause each assessor to enter in appropriate columns upon the tax lists and duplicates for his respective taxing district the net corrected value assessed to each person for both real and personal property, and to enter the addition of the items of each column at the foot thereof, on every page, the rates per dollar, which shall be such as according to the valuation on the duplicate will be sufficient to produce the sum required, and to extend on the duplicates the amount of tax computed on each assessment at that rate."

35. According to the Abstract of Ratables and Exemptions in the County of Somerset for the taxing year 1940, the net valuation of all taxable property, both real and personal, taxable in said Township of Hillsborough amounted to $3,117,863, of which the value of the personal property taxable in said Township amounted to $534,235. The amount of taxes required to be raised for State, County and Township purposes for said year by said aggregate ratables of $3,117,863 was $96,775.20. The tax rate fixed by said Somerset County Board of Taxation pursuant to said R. S. 54:4-48 for the said Township of Hillsborough for the year 1940 was $3.12 for each $100 valuation. By the application of said rate to said aggregate ratables of $3,-

117,863 said tax requirement of $96,775.20 for 1940 of said Township of Hillsborough was raised and collected.

36. According to the Abstract of Ratables and Exemptions in the County of Somerset for the taxing year 1941, the net valuation of all taxable property, both real and personal, taxable in said Township of Hillsborough amounted to $3,139,020, of which the value of the personal property taxable in said Township amounted to $537,210. The amount of taxes required to be raised for State, County and Township purposes for said year by said aggregate ratables of $3,139,020 was $96,726.44. The tax rate fixed by said Somerset County Board of Taxation pursuant to said R. S. 54:4-48 for the said Township of Hillsborough for the year 1941 was $3.10 for each $100 valuation. By the application of said rate to said aggregate ratables of $3,139,020 said tax requirement of $96,726.44 for 1941 of said Township of Hillsborough is being raised and collected.

37. Plaintiff alleges that in and by said resolutions and the assessments thereby made said Somerset County Board of Taxation is attempting (1) to add approximately $222,000,000 to the $3,117,863 of ratables for the taxing year 1940 and thereby to increase said ratables by some 7,100%; and (2) to add approximately $222,000,000 of ratables to the $3,139,020 of ratables for the taxing year 1941 and thereby to increase said ratables also by some 7,100%.

38. Plaintiff alleges that by said addition to said ratables the personal liability of plaintiff on account of taxes for personal property in said Township is attempted to be raised for 1940 some 40,000% from $4,680 to $1,873,698.02, and in addition to exact from plaintiff as such

Trustee the sum of $5,050,843.63; and for the year 1941 likewise some 40,000% from $4,650 to $1,861,687.14, and in addition to exact from plaintiff as such Trustee the sum of $5,018,466.43.

39. Plaintiff alleges that defendant Horner as such Collector by reason of the assessments attempted to be made in and by said resolutions is demanding, as hereinbefore stated, under the pains and penalties of the statutes in such case made and provided (1) the payment by plaintiff, individually and as such Trustee, respectively, of the said taxes by reason of said assessments in the aggregate sum of $6,924,541.65 for the tax year 1940, as contrasted with the total tax requirements for said year of said Township of Hillsborough of $96,775.20, and notwithstanding said tax requirements had been fully raised and there is no additional tax requirement for the year 1940; and (2) the payment by plaintiff, individually and as such Trustee, respectively, of said taxes by reason of said assessments in the aggregate sum of $6,880,153.57 for the tax year 1941, as contrasted with the total tax requirements of said Township for said year of $96,726.44, notwithstanding said tax requirements are being raised and there is no additional tax requirement for the year 1941.

40. Plaintiff alleges that had the amount of said assessments been included in the tax ratables for said years 1940 and 1941 either by said Assessor or by said County Board under its powers of revision under R. S. 54:4-47 the tax rates for said years, in the light of the tax requirements for such years, would have been but a small fraction of said tax rates of $3.12 and $3.10 respectively and the taxes to be paid on account of such assessments would likewise have been only a small part of the amounts now sought to be collected.

41. The assessing authorities of the taxing district of the Township of Hillsborough and the assessing authorities generally throughout the taxing districts of the County of Somerset and of the other taxing districts and counties of the State of New Jersey, and the County and State authorities charged with the duty of revising, correcting and equalizing assessments, have consistently, systematically, intentionally and notoriously failed to assess at true value, or at all, the intangible personal property owned by taxpayers generally as required by the Constitution and Statutes of the State of New Jersey in such case made and provided. Nevertheless, said purported assessments of $60,054,424 against said plaintiff individually for and with respect to intangible personal property for each of the years 1940 and 1941 and said purported assessments of $161,886,014 against said plaintiff as such Trustee for and with respect to intangible personal property for each of the years 1940 and 1941, and each of them, were fixed at what said Somerset County Board of Taxation determined to be the true value as of October 1, 1939 and October 1, 1940, as the case may be, of the intangible personal property involved in said assessments. In and by said purported assessments said Somerset County Board of Taxation and defendants Lifgren, Davenport and Soriano in their capacity as members thereof, and defendant Horner in his capacity as Collector of said Township of Hillsborough, have deliberately singled out the plaintiff, individually and as such Trustee, with the intent and for the purpose of imposing a tax grossly disproportionate to the taxes imposed upon other taxpayers in said Township of Hillsborough and County of Somerset and State of New Jersey and have thereby attempted to impose upon said plaintiff, individually and as such Trustee, a crushing and discriminatory burden of taxation grossly disproportionate to the taxes

imposed upon other taxpayers. By reason of said purported assessments and the other facts and circumstances herein alleged, the plaintiff, individually and as such Trustee, is unjustly, arbitrarily and fraudulently discriminated against, or is threatened so to be, and an enormous, illegal, excessive, discriminatory and disproportionate burden of taxation is being and will be imposed and made to fall upon said plaintiff, both individually and as such Trustee, or is threatened so to be, for each of said tax years by the State of New Jersey, by the County of Somerset, and by the Township of Hillsborough, without remedy therefor under the laws and decisions of the State of New Jersey, in violation of the Statutes and Constitution of said State, and in such manner as to deprive plaintiff, individually and as such Trustee, of her property without due process of law, and to deny to plaintiff, individually and as such Trustee, the equal protection of the laws in contravention of the 14th Amendment to the Constitution of the United States, and on that account said purported assessments and each of them is wholly unconstitutional, invalid and void.

42. Plaintiff alleges that said singling out of the plaintiff and said threatened discrimination against her, both individually and as such Trustee, was at the instigation of one Alfred L. Kirby, a tax ferret and informer, widely known as such in the State of New Jersey, for the personal gain of said Kirby; that the means employed by said Kirby for such instigation is an arrangement between him and the said Township of Hillsborough, whereby said Kirby undertakes to indemnify and save harmless said Township from and against all cost and expense, including counsel fees, arising from or with respect to said purported assessments and the collection of the taxes arising from said assessments and whereby said Kirby is to receive as his compen-

sation a substantial percentage of all taxes which may be collected under or by reason of said purported assessments; that acting under said arrangement said Kirby succeeded in persuading the taxing authorities of said Township and County to single out said plaintiff, individually and as such Trustee, for a method and basis of taxation different from that accorded other taxpayers of said Township and County, by the addition of said intangible property to the ratables for said years as omitted property and thereby attempt to impose these enormous liabilities upon plaintiff, individually and as such Trustee, notwithstanding such nonresidence of said plaintiff and the situs of said intangible property outside of the State of New Jersey, because such action by said taxing authorities was without risk of loss or expense to said Township or to said County from so doing and was at a time and in a manner which would not reduce the tax rate for said years or increase the ratables subject to said tax rate in peril of subsequent reduction of the ratables and tax collections in the event of successful resistance to said assessments by said plaintiff, either individually or as such Trustee; and thereby said Kirby succeeded in magnifying to the prodigious proportions aforesaid the purported assessments and taxes and his opportunity for personal gain and profit therefrom.

43. Plaintiff denies that on Octoer 1, 1939 or on October 1, 1940 or on June 26, 1941 she individually owned or held taxable intangible personal property to the value of $60,054,424; and further denies that she as Trustee of the Duke Endowment or that said Duke Endowment owned or held taxable intangible personal property to the value of $161,886,014 on any of such dates.

WHEREFORE, the plaintiff, individually and as such Trustee, asks for a judgment of this Court declaring:

(1) That said purported assessments, attempted to be imposed in and by the resolutions adopted by said Somerset County Board of Taxation on June 26, 1941, and each of said assessments, are wholly invalid and void because beyond the taxing power and jurisdiction of said Township of Hillsborough and said Somerset County Board of Taxation and the taxing officials thereof, in contravention of the due process clause and the equal protection clause of the 14th Amendment to the Constitution of the United States, and also in contravention of the applicable provisions of the Constitution and Statutes of the State of New Jersey; and

(2) That the plaintiff, individually and as such Trustee, have the costs of this suit.

PITNEY, HARDIN & SKINNER,

SHELTON PITNEY,
WILLIAM J. BRENNAN, JR.,
Attorneys of Plaintiff.

Post Office Address:
744 Broad Street,
Newark, New Jersey.

Exhibit 1, Annexed to Complaint

COMMISSIONERS:

WILLIAM LIFGREN, President
W. W. DAVENPORT, JR., Vice-President
ANGELO SORIANO

SOMERSET COUNTY BOARD OF TAXATION

COURT HOUSE

WALTER C. LINBARGER, Secretary

Telephone Somerville 1634

SOMERVILLE, NEW JERSEY
June 27, 1941.

Mrs. Doris Duke Cromwell
Duke Farms, Hillsborough Township
Somerset County, New Jersey

Dear Madam:

Herewith are enclosed true copies of two resolutions adopted by the Somerset County Board of Taxation at its meeting held June 26, 1941, relating to omitted assessments against you for the years 1940 and 1941.

Please note that the next regular meeting of said Board will be on Monday, July 14, 1941, at 10:30 A. M., D. S. T., at the Court House, Somerville, N. J.

Yours truly,

WALTER C. LINBARGER,
Secy.

Walter C. Linbarger, Secretary
Somerset County Board of Taxation

Enc.
Certified copies of
resolutions re omitted
assessments 1940 and 1941.

Exhibit 2, Annexed to Complaint

RESOLUTION.

WHEREAS, on June 16, 1941, application in writing was made by Christopher G. Horner, a resident and taxpayer of the taxing district of the Township of Hillsborough in the County of Somerset and the duly authorized Collector of Taxes for said Township, which said application was supported by proofs, whereby it appears that on October 1st, 1939, certain intangible personal property owned by Mrs. Doris Duke Cromwell was taxable in the taxing district of said Hillsborough Township and more particularly specified in the schedule hereto annexed and made a part hereof, and that the same was entirely omitted from assessment by the said Township of Hillsborough for the taxing year of 1940, and,

WHEREAS, after careful consideration of the application and proof and after due inquiry and examination into this matter, this Board has reached its determination, now therefore,

BE IT RESOLVED by the Somerset County Board of Taxation and the said Board does hereby adjudge and determine that, Mrs. Doris Duke Cromwell was on October 1st, 1939, a resident and inhabitant of Hillsborough Township, Somerset County, New Jersey, and that the taxable intangible personal property held by said Mrs. Doris Duke Cromwell, was, on October 1st, 1939, entirely omitted by the Assessor of Hillsborough Township from the assessment of property in said Township for the taxing year of 1940, and further,

BE IT RESOLVED that the omitted property in the amount of $60,054,424.00, as appears on the schedule hereto annexed and made a part hereof, be and the same is hereby assessed against the said Mrs. Doris Duke Cromwell, and same is hereby ordered to be entered on the tax duplicate

Exhibit 2, Annexed to Complaint

of Hillsborough Township for the taxing year of 1940, assessed to said Mrs. Doris Duke Cromwell, and further,

BE IT RESOLVED that immediate notice of the entry of this assessment be given to the aforesaid Mrs. Doris Duke Cromwell by the mailing of a copy of this resolution, certified by the Secretary as a true copy, together with a notice of the time and place of the next regular meeting of this Board to be held at 10:30 A. M., D. S. T. on Monday, July 14, 1941, at Somerset County Court House, Somerville, N. J., said mailing to be by registered mail, return receipt requested, to said Mrs. Doris Duke Cromwell, at Duke Farms, Hillsborough Township, Somerset County, New Jersey, and further,

BE IT RESOLVED that a certified copy of this resolution be furnished to the Collector of Taxes for the Township of Hillsborough aforesaid, with direction that he enter upon the tax duplicate of said Township the said amount hereby assessed.

SOMERSET COUNTY BOARD OF TAXATION
William Lifgren Pres.

W. W. Davenport, Jr., V. P.
Angelo R. Soriano

Attest:

WALTER C. LINBARGER
Walter C. Linbarger, Secretary

I, Walter C. Linbarger, Secretary of the Somerset County Board of Taxation, do hereby certify the foregoing to be a true and correct copy of the original resolution adopted by said Board on June 26, 1941.

s/ WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Exhibit 3, Annexed to Complaint

Schedule A

Schedule A annexed to Exhibit 2 is an itemized list of specific intangible personal property owned by Mrs. Doris Duke Cromwell, an inhabitant and resident of Duke Farms, Hillsborough Township, Somerset County, New Jersey, as of October 31, 1939.

The itemization of such property, consisting of cash, notes, interest, dividends receivable, stocks and bonds, totaling $60,054,424.00 is omitted from this appendix.

Exhibit 3, Annexed to Complaint

RESOLUTION

WHEREAS, on June 16, 1941, application in writing was made by Christopher G. Horner, a resident and taxpayer of the taxing district of the Township of Hillsborough in the County of Somerset and the duly authorized Collector of Taxes for said Township, which said application was supported by proofs, whereby it appears that on October 1st, 1940, certain intangible personal property owned by Mrs. Doris Duke Cromwell was taxable in the taxing district of said Hillsborough Township and more particularly specified in the schedule hereto annexed and made a part hereof, and that the same was entirely omitted from assessment by the said Township of Hillsborough for the taxing year of 1941, and,

WHEREAS, after careful consideration of the application and proof and after due inquiry and examination into this matter, this Board has reached its determination, now therefore,

Exhibit 3, Annexed to Complaint

BE IT RESOLVED by the Somerset County Board of Taxation and the said Board does hereby adjudge and determine that, Mrs. Doris Duke Cromwell was on October 1st, 1940, a resident and inhabitant of Hillsborough Township, Somerset County, New Jersey, and that the taxable intangible personal property held by said Mrs. Doris Duke Cromwell, was, on October 1st, 1940, entirely omitted by the Assessor of Hillsborough Township from the assessment of property in said Township for the taxing year of 1941, and further,

BE IT RESOLVED that the omitted property in the amount of $60,054,424.00, as appears on the schedule hereto annexed and made a part hereof, be and the same is hereby assessed against the said Mrs. Doris Duke Cromwell, and same is hereby ordered to be entered on the tax duplicate of Hillsborough Township for the taxing year of 1941, assessed to said Mrs. Doris Duke Cromwell, and further,

BE IT RESOLVED that immediate notice of the entry of this assessment be given to the aforesaid Mrs. Doris Duke Cromwell by the mailing of a copy of this resolution, certified by the Secretary as a true copy, together with a notice of the time and place of the next regular meeting of this Board to be held at 10:30 A. M., D. S. T. on Monday, July 14, 1941, at Somerset County Court House, Somerville, N. J., said mailing to be by registered mail, return receipt requested, to said Mrs. Doris Duke Cromwell, at Duke Farms, Hillsborough Township, Somerset County, New Jersey, and further,

BE IT RESOLVED that a certified copy of this resolution be furnished to the Collector of Taxes for the Township of Hillsborough aforesaid, with direction that he enter upon

the tax duplicate of said Township the said amount hereby assessed.

SOMERSET COUNTY BOARD OF TAXATION
William Lifgren Pres.

W. W. Davenport, Jr., V. P.
Angelo R. Soriano

Attest:

WALTER C. LINBARGER
Walter C. Linbarger, Secretary

I, Walter C. Linbarger, Secretary of the Somerset County Board of Taxation, do hereby certify the foregoing to be a true and correct copy of the original resolution adopted by said Board on June 26, 1941.

s/ WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Schedule A

Schedule A annexed to Exhibit 3 is an itemized list of specific intangible personal property owned by Mrs. Doris Duke Cromwell, an inhabitant and resident of Duke Farms, Hillsborough Township, Somerset County, New Jersey, as of October 1, 1940.

The itemization of such property, consisting of cash, notes, interest, dividends receivable, stocks and bonds, totaling $60,054,424.00 is omitted from this appendix.

Exhibit 4, Annexed to Complaint

COMMISSIONERS:

WILLIAM LIFGREN, President
W. W. DAVENPORT, JR., Vice-President
ANGELO SORIANO

SOMERSET COUNTY BOARD OF TAXATION

COURT HOUSE

WALTER C. LINBARGER, Secretary

Telephone Somerville 1634

SOMERVILLE, NEW JERSEY
June 27, 1941.

Mrs. Doris Duke Cromwell,
Trustee of The Duke Endowment,
Duke Farms, Hillsborough Township,
Somerset County, New Jersey.

Dear Madam:

Herewith are enclosed true copies of two resolutions adopted by the Somerset County Board of Taxation at its meeting held June 26th, 1941, relating to omitted assessments against you, as Trustee, for the years 1940 and 1941.

Please note that the next regular meeting of said Board will be on Monday, July 14, 1941, at 10:30 A. M., D. S. T., at the Court House, Somerville, N. J.

Yours truly,

WALTER C. LINBARGER,
Secy.

Walter C. Linbarger, Secretary
Somerset County Board of Taxation

Enc.
Certified copies of
resolutions re omitted
assessments 1940 and 1941.

Exhibit 5, Annexed to Complaint

RESOLUTION

WHEREAS, on June 16, 1941, application in writing was made by Christopher G. Horner, a resident and taxpayer of the taxing district of the Township of Hillsborough in the County of Somerset and the duly authorized Collector of Taxes for said Township, which said application was supported by proofs, whereby it appears that on October 1st, 1939, certain intangible personal property held by Doris Duke Cromwell, as Trustee of The Duke Endowment, was taxable in the taxing district of said Hillsborough Township and more particularly specified in the schedule hereto annexed and made a part hereof, and that the same was entirely omitted from assessment by the said Township of Hillsborough for the taxing year of 1940, and,

WHEREAS, after careful consideration of the application and proof and after due inquiry and examination into this matter, this Board has reached its determination, now therefore,

BE IT RESOLVED by the Somerset County Board of Taxation and the said Board does hereby adjudge and determine that, Doris Duke Cromwell was on October 1st, 1939, a resident and inhabitant of Hillsborough Township, Somerset County, New Jersey, and that the taxable intangible personal property held by said Mrs. Doris Duke tangible personal property held by her as Trustee of The Duke Endowment, was, on October 1st, 1939, entirely omitted by the Assessor of Hillsborough Township from the assessment of property in said Township for the taxing year of 1940, and further,

BE IT RESOLVED that the omitted property in the amount of $161,886,014.00, as appears on the schedule hereto an-

nexed and made a part hereof, be and the same is hereby assessed against the said Doris Duke Cromwell, as Trustee of The Duke Endowment and the same is hereby ordered to be entered on the tax duplicate of Hillsborough Township for the taxing year 1940, assessed to said Doris Duke Cromwell, as Trustee of The Duke Endowment, and further,

BE IT RESOLVED that immediate notice of the entry of this assessment be given to the aforesaid Doris Duke Cromwell, as Trustee of The Duke Endowment by the mailing of a copy of this resolution, certified by the Secretary as a true copy, together with a notice of the time and place of the next regular meeting of this Board to be held at 10:30 A. M., D. S. T. on Monday, July 14, 1941, at Somerset County Court House, Somerville, N. J., said mailing to be by registered mail, return receipt requested, to said Doris Duke Cromwell, as Trustee of The Duke Endowment, at Duke Farms, Hillsborough Township, Somerset County, New Jersey, and an additional certified copy of this resolution and notice of said next regular meeting to be mailed to the executive offices of The Duke Endowment at 30 Rockefeller Plaza, New York, New York, and further,

BE IT RESOLVED that a certified copy of this resolution be furnished to the Collector of Taxes for the Township of Hillsborough aforesaid, with direction that he enter upon the tax duplicate of said Township the said amount hereby assessed.

SOMERSET COUNTY BOARD OF TAXATION
William Lifgren Pres.

W. W. Davenport, Jr., V. P.
Angelo R. Soriano

Attest:

WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Exhibit 5. Annexed to Complaint

I, Walter C. Linbarger, Secretary of the Somerset County Board of Taxation, do hereby certify the foregoing to be a true and correct copy of the original resolution adopted by said Board on June 26, 1941.

s/ WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Schedule A

Schedule A annexed to Exhibit 5 is an itemized list of specific intangible personal property assessible against Doris Duke Cromwell as trustee of The Duke Endowment at Duke Farms, Hillsborough Township, Somerset County, New Jersey, as of October 1, 1939.

The itemization of such property, consisting of cash, notes, interest, dividends receivable, stocks and bonds, totaling $161,886,014.00 is omitted from this appendix.

Exhibit 6, Annexed to Complaint

RESOLUTION

WHEREAS, on June 16, 1941, application in writing was made by Christopher G. Horner, a resident and taxpayer of the taxing district of the Township of Hillsborough in the County of Somerset and the duly authorized Collector of Taxes for said Township, which said application was supported by proofs, whereby it appears that on October 1st, 1940, certain intangible personal property held by Doris Duke Cromwell, as Trustee of The Duke Endowment, was taxable in the taxing district of said Hillsborough Township and more particularly specified in the schedule hereto annexed and made a part hereof, and that the same was entirely omitted from assessment by the said Township of Hillsborough for the taxing year of 1941, and,

WHEREAS, after careful consideration of the application and proof and after due inquiry and examination into this matter, this Board has reached its determination, now therefore,

BE IT RESOLVED by the Somerset County Board of Taxation and the said Board does hereby adjudge and determine that Doris Duke Cromwell was on October 1st, 1940, a resident and inhabitant of Hillsborough Township, Somerset County, New Jersey, and that the taxable intangible personal property held by her as Trustee of The Duke Endowment, was, on October 1st, 1940, entirely omitted by the Assessor of Hillsborough Township from the assessment of property in said Township for the taxing year of 1941, and further,

BE IT RESOLVED that the omitted property in the amount of $161,886,014.00, as appears on the schedule hereto annexed and made a part hereof, be and the same is hereby

assessed against the said Doris Duke Cromwell, as Trustee of The Duke Endowment and the same is hereby ordered to be entered on the tax duplicate of Hillsborough Township for the taxing year 1941, assessed to said Doris Duke Cromwell, as Trustee of The Duke Endowment, and further,

BE IT RESOLVED that immediate notice of the entry of this assessment be given to the aforesaid Doris Duke Cromwell, as Trustee of The Duke Endowment by the mailing of a copy of this resolution, certified by the Secretary as a true copy, together with a notice of the time and place of the next regular meeting of this Board to be held at 10:30 A. M. D. S. T. on Monday, July 14, 1941, at Somerset County Court House, Somerville, N. J., said mailing to be by registered mail, return receipt requested, to said Doris Duke Cromwell, as Trustee of The Duke Endowment, at Duke Farms, Hillsborough Township, Somerset County, New Jersey, and an additional certified copy of this resolution and notice of said next regular meeting to be mailed to the executive offices of The Duke Endowment at 30 Rockefeller Plaza, New York, New York, and further,

BE IT RESOLVED that a certified copy of this resolution be furnished to the Collector of Taxes for the Township of Hillsborough aforesaid, with direction that he enter upon the tax duplicate of said Township the said amount hereby assessed.

SOMERSET COUNTY BOARD OF TAXATION
William Lifgren Pres.

W. W. Davenport, Jr., V. P.
Angelo R. Soriano

Attest:

WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Exhibit 6, Annexed to Complaint

I, Walter C. Linbarger, Secretary of the Somerset County Board of Taxation, do hereby certify the foregoing to be a true and correct copy of the original resolution adopted by said Board on June 26, 1941.

s/ WALTER C. LINBARGER
Walter C. Linbarger, Secretary

Schedule A

Schedule A annexed to Exhibit 6 is an itemized list of specific intangible personal property assessible against Doris Duke Cromwell as trustee of The Duke Endowment at Duke Farms, Hillsborough Township, Somerset County, New Jersey, as of October 1, 1940.

The itemization of such property, consisting of cash, notes, interest, dividends receivable, stocks and bonds, totaling $161,886,014.00 is omitted from this appendix.

Exhibit 7, Annexed to Complaint

Exhibit 7 is a photostat of a tax bill for the year 1940 issued by the Township of Hillsborough to Mrs. Doris Duke Cromwell, Somerville, New Jersey, indicating a total tax of $1,873,698.02.

Exhibit 8, Annexed to Complaint

Exhibit 8 is a photostat of the reverse side of Exhibit 7.

Exhibit 9, Annexed to Complaint

Exhibit 9 is a photostat of a tax bill for the year 1941 issued by the Township of Hillsborough to Mrs. Doris Duke Cromwell, Somerville, New Jersey, indicating a total tax of $1,861,687.14.

Exhibit 10, Annexed to Complaint

Exhibit 10 is a photostat of the reverse side of Exhibit 9.

Exhibit 11, Annexed to Complaint

Exhibit 11 is a photostat of a tax bill for the year 1940 addressed to Mrs. Doris Duke Cromwell, trustee of The Duke Endowment, Somerville, New Jersey, indicating a total tax of $5,050,843.63.

Exhibit 12, Annexed to Complaint

Exhibit 12 is a photostat of the reverse side of Exhibit 11.

Exhibit 13, Annexed to Complaint

Exhibit 13 is a photostat of a tax bill for the year 1941 addressed to Mrs. Doris Duke Cromwell, trustee of The Duke Endowment, Somerville, New Jersey, indicating a total tax of $5,018,466.43.

Exhibit 14, Annexed to Complaint

Exhibit 14 is a photostat of the reverse side of Exhibit 13.

Answer

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment, *Plaintiff*, —*vs*— TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey; CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough; WILLIAM LIFGREN, W. W. DAVENPORT, JR. and ANGELO R. SORIANO, Somerset County Board of Taxation; and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants*.	Civil Action 1665

The defendants, Township of Hillsborough, Somerset County, New Jersey, Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, and Charles V. N. Davis, Assessor of the Township of Hillsborough, answering the complaint herein respectfully state as follows:

1. Defendants admit that plaintiff is a natural born citizen of the United States, but deny that plaintiff is a resident and inhabitant of the Territory of Hawaii, or that she is a citizen of said territory, but state that plaintiff is a citizen and inhabitant of the State of New Jersey and maintains her residence within the State of New Jersey.

Answer

2. Defendants admit the allegations of paragraph 2.

3. Defendants admit the allegations of paragraph 3.

4. Defendants admit the allegations of paragraph 4.

5. Defendants admit the allegations of paragraph 5.

6. Defendants deny that this is a suit within the scope or contemplation of the Federal Declaratory Judgment Act of June 14, 1934, as amended, and state that this court is without jurisdiction to grant the relief prayed for by the plaintiff under said act. Defendants further deny that this case arises under the Constitution of the United States or that it is a suit, action or controversy between a citizen of the Territory of Hawaii, as plaintiff, and citizens of the State of New Jersey, as defendants, but defendants state that it is a suit wholly between citizens of the State of New Jersey and for that reason, that this court is without jurisdiction in the premises. Defendants further deny that the District Court of the United States for the District of New Jersey has original jurisdiction for the purposes aforesaid of said suit, under and by virtue of the Federal Declaratory Judgment Act.

7. Defendants admit the allegations of paragraph 7.

8. Defendants admit the allegations of paragraph 8.

9. Defendants admit the allegations of paragraph 9.

10. Defendants deny the allegations of paragraph 10 and state that no assessment on account of personal property for the taxing year 1940 was made against the plaintiff, either individually or as Trustee of the Duke Endow-

ment by any of these defendants, nor was any tax paid by the plaintiff on account of any such alleged assessment.

11. Defendants admit the allegations of paragraph 11 with the exception that defendants deny plaintiff's domicile to be in the Territory of Hawaii.

12. In answer to paragraph 12 defendants admit the receipt by the defendant Charles V. N. Davis, as Assessor, of the letter therein set forth.

13. Defendants deny the allegations of paragraph 13 and state that plaintiff was a resident, inhabitant and citizen of the State of New Jersey on October 1, 1940 (and that she continued thereafter to be a resident, inhabitant and citizen of the State of New Jersey). Defendants further state that the situs of any and all intangible personal property owned or held by said plaintiff, either individually or as trustee, was on said date and has since remained within the Township of Hillsborough, in the State of New Jersey, and was therefore liable to taxation in said Township.

14. Defendants admit the allegations of paragraph 14.

15. Defendants deny the allegations of paragraph 15 and state that said reply to said letter of said Assessor did not constitute a true account by the plaintiff of her personal property, money, effects and credits, nor was it received as such by said Assessor.

16. Defendants deny the allegations of paragraph 16 and state that no assessment on account of personal property for the taxing year 1941 was made against the plaintiff by any of these defendants, nor was any tax paid by plaintiff on account of any such alleged assessment.

Answer

17. Defendants deny the allegations of paragraph 17 and state that under the provisions of Section 54:3-20 of the Revised Statutes of the State of New Jersey it is provided as follows: "The County Board of Taxation shall by resolution cause to be entered upon the tax duplicate a proper assessment against any property omitted by the Assessor. The Board shall then give immediate notice of such entry and of the time and place of its next meeting to the owner of the property affected and furnish a copy of the entry to the Clerk or Collector of the Taxing District, who shall enter it on his tax list." Defendants state further that by reason of the provisions of said Section, a mandatory duty was imposed upon the Somerset County Board of Taxation to make the assessments complained of and that said Board of Taxation fully complied with the provisions of said Section, as quoted above, and had full jurisdiction and authority to do so at the time that said assessments were made.

18. Defendants admit the allegations of paragraph 18.

19. Defendants admit the allegations of paragraph 19.

20. Defendants admit the allegations of paragraph 20.

21. Defendants admit the allegations of paragraph 21, but beg leave to refer to the original resolutions and proceedings of the Somerset County Board of Taxation.

22. Defendants admit the allegations of paragraph 22 and state that all acts performed by the defendant Christopher G. Horner as Collector of Taxes were done at the direction and under the authority of the Somerset County Board of Taxation, whose direction said defendant was by law bound to observe.

23. Defendants deny the allegations of paragraph 23 and state that notice was given to the plaintiff individually and as trustee, pursuant to the provisions of Section 54:3-20 of Revised Statutes of the State of New Jersey as quoted above. Defendants further state that plaintiff, through her counsel, did appear at the meeting of the Somerset County Board of Taxation held on July 14, 1941, pursuant to said notice.

24. Defendants admit the allegations of paragraph 24 and the writing of the letter therein referred to, but state that said letter was written in performance of the mandatory duty imposed by law upon the defendant Horner, as Collector.

25. Defendants admit the allegations of paragraph 25 and the writing of the letter therein referred to, but state that said letter was written in performance of the mandatory duty imposed by law upon the defendant Horner, as Collector.

26. Defendants deny the allegations contained in paragraph 26 and state that the procedure and proceedings of the Somerset County Board of Taxation were in accordance with the usual practice in such cases and in conformity with the law and statutes in such case made and provided. Defendants further state that plaintiff has a full and adequate remedy by appeal to the courts of the State of New Jersey to review said assessments, of which remedy plaintiff has not availed herself.

27. Defendants admit the allegations of paragraph 27, but beg leave to refer to the entire provisions of the statutes cited by plaintiff and to the other provisions of the Revised Statutes of the State of New Jersey respecting taxation.

28. Defendants deny that the provisions of Section 54:3-20 of the Revised Statutes of the State of New Jersey are as stated and quoted by plaintiff in paragraph 28, and defendants state that plaintiff has omitted material portions of said Section pertinent to this cause. Said Section provides as follows:

"54:3-20. Assessment of omitted property.

The county board of taxation shall, by resolution, cause to be entered upon the tax duplicate a proper assessment against any property omitted by the assessor. The board shall then give immediate notice of such entry and of the time and place of its next meeting to the owner of the property affected, and furnish a copy of the entry to the clerk or collector of the taxing district, who shall enter it on his tax list. On the written complaint of the collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the county board, on five days' notice in writing to the owner by the party complaining, and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing, a transcript whereof shall be furnished by the board to the collector, who shall amend his duplicate accordingly. The collector shall present such complaints and serve such notices as the governing body may direct and shall attend before the board and subpoena proper witnesses and pay their fees. He shall receive reimbursement therefor and two dollars for every day he shall attend for his services from the taxing district. Such proceedings may be brought within one year from the date when taxes on real property become a lien."

Answer

29. Defendants deny each and every allegation in paragraph 29 and state that the Somerset County Board of Taxation fully complied with the provisions of Section 54:3-20 as quoted above, and proceeded wholly in accordance with law and had full jurisdiction in the premises.

30. Defendants deny the allegations of paragraph 30 and state that the assessments against plaintiff, individually, were made against the plaintiff as a citizen and resident of the Township of Hillsborough, in the State of New Jersey; that plaintiff was on October 1, 1939 and on October 1, 1940, a citizen and resident of said Township of Hillsborough; and that the situs of said intangible personal property was on said dates within the Township of Hillsborough and within the taxing jurisdiction of said Township and therefore liable to said assessment and taxation. Defendants further state that the assessments made against plaintiff, as trustee, were made against plaintiff as a citizen and resident of the Township of Hillsborough in the State of New Jersey; that plaintiff was on October 1, 1939 and on October 1, 1940, a citizen and resident of said Township of Hillsborough; that the Duke Endowment was on said dates a New Jersey trust, having its legal situs in the Township of Hillsborough and the State of New Jersey; and that the situs of intangible personal property owned by said trust or by plaintiff as such trustee, was on said dates wholly within the Township of Hillsborough and within the taxing jurisdiction of said Township and therefore liable to assessment and taxation.

31. Defendants deny the allegations of paragraph 31 and state that no such determination or finding was required to be made by the Somerset County Board of Taxation.

Answer

32. Defendants deny the allegations contained in paragraph 32 and state that plaintiff, individually and as trustee, was a citizen and resident of the Township of Hillsborough in the State of New Jersey on October 1, 1939 and on October 1, 1940, and was subject to assessment and taxation with respect to intangible personal property under the laws of the State of New Jersey.

33. Defendants admit that the Duke Endowment is a common law trust of the State of New Jersey created by James B. Duke by written indenture dated December 11, 1924, and executed and delivered by him on that day. Defendants state that at the time of the creation of said trust and at the time of his death, the said James B. Duke was a citizen and resident of the Township of Hillsborough in the State of New Jersey, and had his domicile within said Township. By reason thereof the situs of all personal property belonging to said trust, including intangible personal property, was and is in the Township of Hillsborough aforesaid.

Defendants deny that said trust is devoted exclusively to charitable purposes and state further that said trust and the income and corpus thereof is not held for or devoted to religious, charitable, benevolent or eleemosynary purposes within the State of New Jersey and is not therefore exempt from taxation by the State of New Jersey.

Defendants deny that plaintiff has never had and does not now have any personal or beneficial interest in the corpus or the incomes, revenues and profits of the Duke Endowment or that she does not now have or never has had any possession or custody or control over the personal property of said Duke Endowment, or any right to bring or cause to be brought into her possession, custody, or

control the said properties or the evidences thereof. Defendants state that by virtue of the provisions of Item IV of the Last Will and Testament of James B. Duke, dated December 11, 1924 and probated in the Surrogate's office of Somerset Co., N. J., it is provided as follows:

> "I give, devise and bequeath to my said daughter, DORIS DUKE, specifically, absolutely and in fee simple forever, any and all funds and properties of whatever kind, at any time or from time to time held in, forming a part of, or arising under, or hereby devised or bequeathed to, any trust which I hereby create or may have created by indenture prior to my death (including the trust created by me by Indenture dated May 2, 1917, the trust created by me by Indenture dated September 4, 1917, and the trust created by me by Indenture dated December 11, 1924) and/or any of said instruments in whole or in part for the benefit of my said daughter, DORIS DUKE, to the extent that said funds and properties may not be, or shall not have been legally or validly, paid or applied or distributed under or by virtue of the terms of any one or more of said trusts and/or of the instruments creating or establishing the same by reason of any one or more of said trusts and/or said instruments to any extent not completely disposing of said funds and properties or being, or being held, declared, adjudged or decreed to be, void, invalid, illegal, inadequate or ineffectual, in whole or in part, for any reason, on any ground, at any time, to any extent or in any respect whatever.
>
> "I also give, devise and bequeath to my said daughter, DORIS DUKE, specifically, absolutely and in fee simple forever, any and all funds and properties at any time and from time to time held in,

forming a part of, or arising under, or hereby devised or bequeathed to, any trust which I hereby create or may have created prior to my death by Indenture (including the trust created by me by Indenture dated December 11, 1924, wherein the said trust is denominated The Duke Endowment) in whole or in part for the benefit of any charitable purpose to the extent that said funds and properties may not be, or shall not have been legally or validly, paid or applied or distributed under or by virtue of the terms of any one or more of said trusts and/or of the instruments creating or establishing the same by reason of any one or more of said trusts and/or said instruments being, or being held, declared, adjudged or decreed to be, void, invalid, illegal, inadequate or ineffectual in whole or in part for any reason or on any ground at any time, to any extent whatever or in any respect whatever."

Defendants state that by reason of the provisions of said Last Will and Testament, plaintiff has a personal and beneficial interest in and to said trust.

Defendants further deny that the securities and personal property belonging to said Duke Endowment and the evidences thereof have and always have had a legal situs outside of the State of New Jersey, but state that said personal property has had at all times and still has its legal situs in the Township of Hillsborough and State of New Jersey.

Defendants deny that the assessments by the Somerset Board of Taxation for the tax years 1940 and 1941 with respect to intangible personal property of the Duke Endowment was or is an attempt to extend to taxing jurisdiction of the Somerset County Board of Taxation beyond

the territorial limits of said Township, County and State; and defendants deny that said assessments are in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States, and a denial of the due process of laws secured thereby, or that said assessments are unconstitutional, invalid and void.

Except as herein admitted or denied, defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph 33 and therefore deny same.

34. Defendants admit the allegations contained in paragraph 34, but beg leave to refer to the remaining provisions of the Revised Statutes of the State of New Jersey pertaining to taxation.

35. Defendants admit the allegations contained in paragraph 35.

36. Defendants admit the allegations contained in paragraph 36.

37. Defendants deny the allegations contained in paragraph 37 and state that in and by said resolutions and assessments the Somerset County Board of Taxation is complying with its mandatory duty under the laws and statutes of the State of New Jersey to tax all property within the jurisdiction of its taxing district at its true value.

38. Defendants deny the allegations contained in paragraph 38 and state that in and by said resolutions and assessments the Somerset County Board of Taxation is complying with its mandatory duty under the laws and stat-

utes of the State of New Jersey to tax all property within the jurisdiction of its taxing district at its true value.

39. Defendants admit that the defendant Horner, as such Collector, at the direction of the Somerset County Board of Taxation and in compliance with the mandatory duty imposed upon him by law, is demanding from the plaintiff payment of said taxes by reason of said assessments, but denies the remaining allegations of paragraph 39.

40. Defendants deny the allegations contained in paragraph 40 but state that if said allegations are true they are due to the fact that plaintiff concealed from the Collector of Taxes of the Township of Hillsborough the true amount of her taxable assets in previous years and her existence as a taxpayer of the Township of Hillsborough and State of New Jersey.

41. Defendants deny each and every allegation contained in paragraph 41 and state that all acts alleged to have been performed by the defendants were done pursuant to the mandatory duty imposed by law upon them. Defendants further state that if any discrimination as existed it has been against the remaining taxpayers of the Township of Hillsborough, the County of Somerset and the State of New Jersey, by reason of the fact that the plaintiff, individually and as trustee, has failed to pay any taxes on personal property owned by her for the past seventeen years.

42. Defendants deny the allegations contained in paragraph 42 and state that said allegations are wholly immaterial and irrelevant to the issues here involved.

Answer

43. Defendants deny the allegations contained in paragraph 43.

FIRST SEPARATE DEFENSE

Defendants state that this Court has no jurisdiction over the within cause, for the reason that the said Doris Duke Cromwell is not a citizen or inhabitant of the Territory of Hawaii, as set forth in the complaint, but that she is a citizen and resident of the State of New Jersey, of which State defendants are also citizens.

SECOND SEPARATE DEFENSE

Defendants deny that the matters in controversy in this suit are proper questions arising under the Constitution and Laws of the United States, but aver on the contrary that no proper Federal question arises under the bill of complaint.

THIRD SEPARATE DEFENSE

Defendants state that the controversy alleged to exist between plaintiff and defendants is one solely between the State of New Jersey, in its sovereign capacity through the municipal corporations defendant and the individual defendants acting as agents and agencies of said State, and the plaintiff as a taxpayer of said State; that said controversy is purely local in character and is properly cognizable in the Courts of the State of New Jersey only; and that this Court is wholly without jurisdiction in the premises.

Fourth Separate Defense

Defendants aver and charge that the within action is one to enjoin, suspend, restrain and interfere with the assessment, levy and collection of a tax imposed by and pursuant to the Laws of the State of New Jersey; that a plain, speedy and efficient remedy may be had in the courts of the State of New Jersey and under the laws of said State respecting all the matters herein complained of, alleged and set forth, and all of the relief herein prayed for; that by virtue thereof, under the provisions of Title 28, Section 41, Subdivision 1, of the United States Code Annotated, and within the meaning and intent of said Section, this Court is wholly without jurisdiction over said suit.

Fifth Separate Defense

By the statutes and laws of the State of New Jersey, a plain, adequate and speedy remedy is afforded to the plaintiff for the review of the assessments herein complained of, through the medium of an appeal from said assessments and from the decision and determination of the Somerset County Board of Taxation in making said assessments, to the State Board of Tax Appeals of the State of New Jersey; whose determination, in turn, is reviewable by the Supreme Court of the State of New Jersey and the Court of Errors and Appeals of the State of New Jersey, in the manner provided by the laws and statutes of said State. Defendants charge that plaintiff has not exhausted the remedies provided in the courts of the State of New Jersey, nor has she availed herself of her right to appeal from said assessments, although the time for the filing of said appeal has not yet expired.

Defendants state that the proceedings before the Somerset County Board of Taxation and the Assessments made by said board constitute a proceeding pending in the courts of the State of New Jersey involving the identical issues raised herein and over which issues the courts of said State have full and complete jurisdiction; that by reason thereof this court is without jurisdiction to entertain this action, under the provisions of the Federal Declaratory Judgments Act, nor to grant the relief herein prayed for by the plaintiff.

SIXTH SEPARATE DEFENSE

Defendants state that the controversy alleged to exist between plaintiff and defendants is one solely between the State of New Jersey, in its sovereign capacity, acting through the defendants, as agents and agencies of said State, and the plaintiff as a taxpayer of said State; that the consent of said State to be sued has not been obtained by the plaintiff as a condition precedent to the institution of said action; and that this court is therefore without jurisdiction to try the issues herein involved.

SEVENTH SEPARATE DEFENSE

Plaintiff has failed to join as parties defendant to the bill of complaint William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation, notwithstanding that said persons and the Somerset County Board of Taxation are necessary parties defendant to this cause of action.

EIGHTH SEPARATE DEFENSE

The bill of complaint herein charges that the assessments made against plaintiff, which form the subject matter of this cause of action, were imposed and assessed against plaintiff by the Somerset County Board of Taxation and were made by and through the resolutions and determinations of said Somerset County Board of Taxation and not by these defendants. Defendants charge that by reason thereof the said Somerset County Board of Taxation and William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the said Somerset County Board of Taxation, are necessary parties defendant to this cause, and that by reason of plaintiff's failure to include said persons as defendants herein the bill of complaint is, as to these defendants, fatally defective and fails to charge or allege any grounds for relief against these defendants.

NINTH SEPARATE DEFENSE

Plaintiff, without notice to these defendants, voluntarily consented to a dismissal of the bill of complaint as against the defendants, William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation. Defendants charge that by reason of the allegations of the bill of complaint herein, any claim for relief as against these defendants is barred by reason of the voluntary dismissal of the bill of complaint as to the defendants William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, constituting the Somerset County Board of Taxation, and the defendants aver that plaintiff is estopped from seeking any relief as against these defendants.

TENTH SEPARATE DEFENSE

The sole cause of action alleged in the bill of complaint is against the defendants William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation, and no cause of action is alleged as against these defendants. The said William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation, were voluntarily dismissed as parties defendant herein, through the consent of the plaintiff and without notice to these defendants. Defendants state that by reason thereof the bill of complaint fails to set forth any cause of action against these defendants, or any grounds for relief against these defendants.

ELEVENTH SEPARATE DEFENSE

The bill of complaint fails to adequately set forth any cause of action, legal or equitable, against these defendants, entitling plaintiff to the relief prayed for under the Federal Declaratory Judgment Act.

OBJECTIONS IN POINT OF LAW

Defendants reserve the right, at or before the trial or hearing of this cause, to move to strike out and dismiss the bill of complaint herein upon the following grounds:

1. That this Court is without jurisdiction over the within cause, for the reason that the plaintiff is not a citizen or inhabitant of the territory of Hawaii, as set forth in the complaint, but is a citizen and resident of the

State of New Jersey, of which State defendants are also citizens.

2. That the matters in controversy, as alleged in the bill of complaint, are not proper questions arising under the constitution and laws of the United States, and that no proper Federal question arises under the bill.

3. That the controversy alleged to exist between plaintiff and defendants is one solely between the State of New Jersey in its sovereign capacity, through the defendants, acting as agents and agencies of said State, and the plaintiff as a taxpayer of said State; that said controversy is purely local in character and is properly cognizable in the courts of the State of New Jersey only; and that this Court is wholly without jurisdiction in the premises.

4. That the within action is one to enjoin, suspend, restrain and interfere with the assessment, levy and collection of a tax imposed by and pursuant to the laws of the State of New Jersey; that a plain, speedy and efficient remedy may be had in the courts of the State of New Jersey and under the laws of said State respecting all of the matters herein complained of and all of the relief herein prayed for; that by virtue thereof, under the provisions of Title 28, Section 41, Subdivision 1, of the United States Code Annotated, and within the meaning and intent of said Section, this Court is wholly without jurisdiction over said suit.

5. That a plain, adequate and speedy remedy is afforded to the plaintiff for the review of the assessments herein complained of, under the statutes and laws of the State of New Jersey and in the courts of the State of

New Jersey, through the medium of an appeal from the determination of the Somerset County Board of Taxation, in making said assessments, to the State Board of Tax Appeals of the State of New Jersey; whose determination, in turn, is reviewable by the Supreme Court of the State of New Jersey and the Court of Errors and Appeals of the State of New Jersey, in the manner provided by the laws and statutes of said State; that plaintiff has not exhausted the remedies provided her in the courts of the State of New Jersey, nor has she availed herself of her right to appeal from said assessments, although the time for the finding of said appeal has not yet expired; that the proceedings before the Somerset County Board of Taxation and the assessments made by said Board, as alleged in the bill of complaint, constitute a proceeding pending in the courts of the State of New Jersey involving the identical issues raised herein, over which issues the courts of the State of New Jersey have full, complete and exclusive jurisdiction; that by reason thereof this court is without jurisdiction to entertain this action or to grant the relief herein prayed for by the plaintiff.

6. That the controversy alleged to exist between plaintiff and defendants is one solely between the State of New Jersey in its sovereign capacity, acting through the defendants as agents and agencies of said State, and the plaintiff as a taxpayer of said State; that the consent of said State to be sued has not been obtained by the plaintiff as a condition precedent to the institution of said action, and that this court is therefore without jurisdiction in the premises.

7. That the courts of the State of New Jersey have sole and exclusive jurisdiction over the within cause of action and that this Court is without jurisdiction in the premises.

8. That no cause of action is alleged, entitling plaintiff to relief under the provisions of the Federal Declaratory Judgment Act.

9. That the plaintiff has failed to join William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, constituting the Somerset County Board of Taxation, who are necessary parties defendant to this cause.

10. That the bill of complaint alleges that the assessments made against plaintiff, which form the subject matter of this suit, were imposed and assessed against plaintiff by William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting and acting as the Somerset County Board of Taxation, and were made by and through the resolutions and determinations of said Somerset County Board of Taxation, and not by these defendants. By reason thereof, the said William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation, are necessary parties defendant to this cause; that plaintiff has failed to include said persons or said Somerset County Board of Taxation as defendants herein, notwithstanding they are necessary parties; and that the bill of complaint for such reasons fails to charge or allege any grounds for relief against these defendants.

11. That the plaintiff, without notice to these defendants, voluntarily consented to a dismissal of the bill of complaint as against the defendants, William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation; that by reason of such voluntary dismissal, without notice to these defendants, any claim for relief as against these defend-

ants is barred and plaintiff is estopped from claiming the relief prayed for as against these defendants.

12. That the bill of complaint, on its face, allege that all acts performed by these defendants were performed in pursuance of their mandatory duty imposed upon them by law under the direction of the Somerset County Board of Taxation, whose direction defendants were bound to follow.

13. The bill of complaint fails to set forth any cause of action, legal or equitable, against these defendants, entitling plaintiff to the relief prayed for under the Federal Declaratory Judgment Act.

WHEREFORE defendants, Township of Hillsborough, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, and Charles V. N. Davis, Assessor of the Township of Hillsborough, pray that the bill of complaint exhibited against them herein may be dismissed, and that your defendants may have their costs.

CLARKSON A. CRANMER,
Attorney for Defendants, Township of Hillsborough, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and Charles V. N. Davis, Assessor of the Township of Hillsborough.

Post Office Address:
Somerville Trust Co. Bldg.
Somerville, N. J.

COX & WALBURG
KESSLER AND KESSLER
of Counsel

Notice of Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment *Plaintiff* *v.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, *et als.* *Defendants*	Civil Action #1665

To: DORIS DUKE CROMWELL, individually, and
Messrs. PITNEY, HARDIN & SKINNER, her attorneys

SIRS:

TAKE NOTICE that on Monday, November 3, 1941, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, we shall apply to the Judge sitting to hear motions in the above entitled court, at the Post Office Building, Federal Square, Newark, New Jersey, for an order dismissing the complaint filed in the above entitled matter by said plaintiff on one or more of the following grounds:

1. That no actual controversy exists between the plaintiff and these defendants, cognizable by this Court within the Federal Declaratory Judgment Act, U. S. C. A. 28, section 400.

2. That this Court is without jurisdiction for the reason that no actual controversy exists between this plaintiff and these defendants.

Notice of Motion to Dismiss Complaint

3. That the sole relief prayed for by the plaintiff herein is for a judgment of this Court declaring invalid certain tax assessments levied under the laws of the State of New Jersey, by the Somerset County Board of Taxation, consisting of William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano; that subsequent to the institution of the within action the said plaintiff consented to a discontinuance or dismissal of such action against said Somerset County Board of Taxation, consisting of said William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, without notice to these defendants. The said William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, constituting the Somerset County Board of Taxation, are indispensable and necessary parties-defendant to the within action, without which this Court cannot determine the issues raised herein.

4. That the purpose of the within action is to enjoin, suspend or restrain the assessment, levy or collection of a tax imposed by and pursuant to the laws of the State of New Jersey, although a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State of New Jersey, contrary to the provisions of U. S. C. A. 28, section 41, subdivision 1.

5. That this court is without jurisdiction of the within action for the reason that the complaint fails to state a claim within the jurisdiction of this Court.

6. That a plain, speedy, adequate and efficient remedy is afforded to the plaintiff for the review of the assessments complained of under the statute and laws of the State of New Jersey.

7. That the plaintiff herein has failed to exhaust her remedies in the administrative bodies and the courts of the State of New Jersey provided for the review of the assessments complained of.

8. That the assessments complained of was made pursuant to the provisions of the laws of the State of New Jersey, and by the Somerset County Board of Taxation, a state administrative body acting as agent of the State of New Jersey, and that the within action relates to a controversy alleged to exist between the plaintiff and the State of New Jersey in its sovereign capacity, and that the consent of the said State of New Jersey to be sued has not been obtained by the plaintiff, and that this Court is, therefore, without jurisdiction.

Respectfully

CLARKSON A. CRANMER,
Attorney for defendants, Township of Hillsborough, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and Charles V. N. Davis, Assessor of the Township of Hillsborough
Post Office Address:
Somerville Trust Co. Bldg.
Somerville, N. J.

KESSLER & KESSLER
COX & WALBURG
Of Counsel
By HARRY E. WALBURG

Opinion of Fake, *D. J.*, Denying Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment, *Plaintiff*; *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey; CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough; WILLIAM LIFGREN, W. W. DAVENPORT, JR. and ANGELO R. SORIANO, Somerset County Board of Taxation; and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants.*	Civil 1665

APPEARANCES:

Messrs. PITNEY, HARDIN & SKINNER, by SHELTON PITNEY, Esq., and WILLIAM J. BRENNAN, JR., Esq., For the Plaintiff.

CLARKSON A. CRANMER, Esq.

Messrs. KESSLER & KESSLER, by SAMUEL I. KESSLER, Esq., and

Messrs. COX & WALBURG, by HARRY E. WALBURG, Esq., For the Defendants.

Opinion of Fake, D. J., Denying Motion to Dismiss Complaint

FAKE, District Judge:

This suit is instituted under the Federal Declaratory Judgment Act, U. S. C. A. 28, Sec. 400. The plaintiff, who sues both as an individual and as a trustee, seeks the judgment of this court as to the validity of certain taxes assessed against her on intangible personal property claimed by the taxing authorities to be situate in the Township of Hillsborough in the County of Somerset and State of New Jersey.

The issues presently to be disposed of arise on a motion to dismiss the complaint, based on a number of specific grounds, which will be hereinafter separately considered.

First: It is contended that no actual justiceable controversy exists between the plaintiff and the defendants, which is cognizable under the Declaratory Judgment Act.

For the purposes of this motion, the Court accepts as true all the allegations of the complaint, which are well and sufficiently pleaded as in cases arising on demurrer at common law. That this is the proper approach is so firmly founded as to require no citations to sustain it.

It appears upon the face of the complaint that the defendant Horner, acting as the Township Collector, and after certain preliminary proceedings, made a demand upon the plaintiff in writing, calling upon her individually to make payment of certain tax bills, covering personal property aggregating the sum of $3,735,385.16 for the years 1940 and 1941. A like demand was made upon the defendant as trustee of the Duke Endowment for an aggregate sum of $10,069,310.06 for personal property taxes for the said years.

Opinion of Fake, D. J., Denying Motion to Dismiss Complaint

Plaintiff alleges that she is not now, and has not been, a resident and inhabitant of the Township of Hillsborough since "prior to October 1, 1940", and that her residence and domicile has been in the Territory of Hawaii, since prior to October first as aforesaid. Moreover, she alleges that the personal property, so assessed, had no situs within the taxing district within the time that it might be legally assessed.

Taxes, legally assessed against personal property in the State of New Jersey, create a personal liability against the individual in whose name the same are assessed. (Revised Statutes of New Jersey, sec. 54:4-1.) It is provided by Sec. 54:4-80 of said statutes that a copy of the entry of a tax so assessed "shall be a sufficient warrant for the distress and sale or arrest and imprisonment authorized by Secs. 54:4-78 and 54:4-79 of this Title." From which it would appear on the fact of the complaint, that the property in question could not be legally assessed within the Township because it was not within the Township, and the plaintiff was a nonresident at the time the assessments were levied. See Dewey v. Des Moines, 173 U. S. 193, 43 L. Ed. 665; American Surety Co. v. Baldwin, 287 U. S. 156, 77 L. Ed. 231, and Nashville C. & St. L. R. v. Wallace, 288 U. S. 249, 77 L. Ed. 730. Therefore, an actual controversy cognizable before this Court does exist between the plaintiff and the defendants.

Second: After the institution of this suit, the defendants Lifgren, Davenport, and Soriano, constituting the Somerset County Board of Taxation, sought an order dismissing the suit as to them, on the ground that they were not necessary parties, and with the consent of plaintiff's attorneys, such an order was entered. The remaining de-

fendants now contend that this order was entered without notice to them, and that the said defendants were necessary parties. This contention can not be sustained because the Board has no interest in this controversy, nor has it any power to collect the taxes involved. No relief is sought against it. Its relation to the issues here is analogous to that of a court whose opinion is being questioned or attacked. Raymond v. Chicago Traction Co., 207 U. S. 30, 52 L. Ed. 78. A reading of the statute under which the assessments were made (R. S. 54:3-20), shows that the Township, and its Collector Horner, were alone vested with power to demand and enforce collection of the taxes, and upon payment the monies would become the funds of the Township. See R. S. 54:4-1; 54:4-64 to 67, 54:4-78 to 80 and R. S. 54:4-73. See also Booth v. Parnell, 12 N. J. Misc. 413, and Greene v. Louisville & I. R. Co., 244 U. S. 499, 508-7, 61 L. Ed. 1281.

Third: It is argued that the purpose of this declaratory judgment proceeding is to suspend or restrain the collection of a tax contrary to the provisions of U. S. C. A. Title 28, sec. 41, subd. 1. At the moment we are concerned only with the relief sought under the complaint, and not with the use or purposes to which the judgment may subsequently be directed. No relief whatever is now sought, other than a judgment on the validity of the assessments complained of; hence, no violation of the section above mentioned is involved because no restraint of any kind is asked for. This Court is, therefore, free to proceed to judgment. Nashville, C. & St. L. R. Co. v. Wallace, 288 U. S. 249, 77 L. Ed. 730, Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 81 L. Ed. 617, Carpenter v. Edmonson, 92 F. (2d) 895, N. Y. Life Ins. Co. v. Roe, 102 F. (2d) 28, Rydstrom v. Massachusetts Accept. Co., 25 F. Supp. 359, Penn-

sylvania v. Glenn, 10 F. Supp. 483, Morrison-Knudsen Co. v. State Board of Equalization, 35 F. Supp. 553, Black v. Little, 8 F. Supp. 867, Fosgate v. Kirkland, 19 F. Supp. 152. Per contra, see Collier Ad. Service v. City of New York, 32 F. Supp. 870, the reasoning of which is destroyed by the reasoning of Judge Kennedy in the Morrison-Knudsen case above cited.

Fourth: It is urged that there is an adequate remedy at law, and therefore, this complaint should be dismissed. It is my view that a justiceable issue is involved here under the Declaratory Judgment Act, and the rule limiting jurisdiction in equity does not apply.

Fifth: It is argued that plaintiff has failed to exhaust her remedies in the administrative bodies and the courts of the State. In this connection, attention is directed to the opinion of Mr. Justice Perskie in Central Co. of New Jersey v. State Tax Department, 112 N. J. L. 5, 169 Atl. 489, from which moving counsel attempts to spell out an intent by the court of last resort of New Jersey to follow the rulings in the federal cases, such as, Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, and Iowa-Des Moines National Bank v. Bennett, 284 U. S. 239.

As I read the opinion of Mr. Justice Perskie above mentioned, I find that it carefully avoids meeting the rule laid down in the federal cases above cited, and merely holds there was no discrimination in fact. This is a long way from holding that if discrimination was shown as a fact, the federal case law as to discrimination would prevail. That it was not the intent to follow the federal case law, clearly appears by an opinion of Mr. Justice Perskie, sitting later in the New Jersey Supreme Court in Lehigh

Valley R. R. v. State Board, 12 N. J. Misc. 673, wherein he said:

> "Did the state board commit an error in law in refusing to hear the testimony of petitioners touching discrimination? Decidedly no. It is the established law of this state that the fact that other property in a taxing district is assessed for valuation less than its true value affords no ground for reducing the assessment placed upon the property of a complaining taxpayer below the true value thereof. Royal Manufacturing Co. v. Board of Equalization of Taxes, 78 N. J. L. 337; 74 Atl. Rep. 525. The petitioners concede this to be true but contend that the rule to the contrary, as announced in the cases of which Sioux City Bridge Co. v. Dakota, 260 U. S. 441, is typical, should be followed and that the holding of Royal Manufacturing Co. v. Board of Equalization of Taxes, supra, should be disapproved. A substantially like contention was made and denied by this court in the case of Hackensack Water Co. v. Woodcliffe Lake, 104 N. J. L. 48; 139 Atl. Rep. 410. The law, on this point, is also settled and controlling."

Thus it is found that Judge Buffington's opinion in Central R. Co. of New Jersey v. Martin, 65 F. (2d) 613 still stands unblighted by the strictures found In re New York, S. & W. R. Co., 36 F. Supp. 158, and the law of the State of New Jersey still remains in conflict with the Constitution of the United States. It follows that the administrative remedies provided by the State, and sustained by the state courts, fail to afford a full, complete and adequate remedy to redress the discrimination charged in the complaint under review.

Order Denying Motion to Dismiss Complaint

All of the objections raised to the complaint on this motion are completely set at naught by the cases relied upon in the plaintiff's answering brief.

The motion to dismiss is denied, and an order will be entered accordingly.

Order Denying Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, Individually and as Trustee of Duke Endowment, *Plaintiff,* *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, *et al.*, *Defendants.*	Civil Action No. 1665

The defendants, Township of Hillsborough, Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, and Charles V. N. Davis, Assessor of the Township of Hillsborough, by their attorneys, having moved to dismiss the complaint in the above entitled cause, and this Court having heard and considered the oral arguments of Harry E. Walburg, Esq., of counsel for the defendants, in support of the motion and of Shelton Pitney, Esq., of counsel for the plaintiff, in opposition thereto, and having read and considered the briefs filed in behalf of the

Order Denying Motion to Dismiss Complaint

respective parties; and the Court being of opinion that said motion to dismiss should be denied and having filed its written opinion in the cause:

It is, on this 10th day of August, 1942, on motion of Pitney, Hardin & Ward (formerly Pitney, Hardin & Skinner), attorneys for the plaintiff, ORDERED that the motion made on behalf of the defendants to dismiss the complaint in the above entitled cause be and the same is hereby denied, with costs.

GUY L. FAKE
U. S. D. J.

Plaintiff's Notice of Motion for Summary Judgment

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of The Duke Endowment, *Plaintiff,* *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants.*	Civil Action No. 1665

To: Samuel I. Kessler, Esq.,
Messrs. Kessler & Kessler,
9 Clinton Street, Newark, N. J.

Harry E. Walburg, Esq.,
Messrs. Cox & Walburg,
Raymond-Commerce Bldg., Newark, N. J.

Gentlemen:

PLEASE TAKE NOTICE that on Monday, the 27th day of March, 1944, at 10:30 A. M. (E. W. T.) or as soon thereafter as counsel can be heard, at the court rooms of the United States District Court, District of New Jersey, Post Office Building, Federal Square, Newark, N. J., we shall

apply to the Court for the entry of a summary judgment in the above-entitled action declaring and adjudicating the four certain resolutions adopted by the Somerset County Board of Taxation at an *ex parte* meeting of said Board held on June 26, 1941, as well as all entries and assessments of properties made and tax bills presented in and for said Township of Hillsborough by reason of said resolutions, wholly null and void on the ground alleged in the complaint in said action, and especially in paragraphs 17 and 21 through 32 of said complaint, which sets forth true copies of said resolutions, said tax bills which were dated June 30, 1941, and the letters of said Horner, as Collector of said Township, dated June 30, 1941 which presented said tax bills for "forthwith" payment, namely: That said resolutions were adopted after April first of each of the tax years 1940 and 1941 upon and in response to the written complaints (in said resolutions called "applications") of said Christopher G. Horner, the Collector and a resident and taxpayer of said Township, so demanding and presented to said Board for that purpose and by said resolutions said Board undertook at an *ex parte* meeting of said Board to assess, and to enter or cause to be entered on the tax lists and duplicates of said Township for assessment, in and by said Township for each of said tax years the intangible personal properties embraced in said resolutions, entries and assessments on the ground that said properties had been wholly omitted in the assessment for said Township for each of said tax years, without the plaintiff, either personally or as such Trustee, being given any notice of said complaints or meeting or being present or represented or accorded any hearing at said meeting and in particular without plaintiff in either of said capacities having been given the "five days' notice in writing to the owner by the party complaining" or accorded by said Board the "due

examination" or the "hearing" of a judicial character made indispensable prerequisites to the adoption of such resolutions and the mandatory provision of Section 54:3-20 of the Revised Statutes of New Jersey that:

> "On the written complaint of the collector or any taxpayer of the taxing district or of the governing body thereof that property specified has been omitted in the assessment, the county board, on five days' notice in writing to the owner by the party complaining and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing, a transcript whereof shall be furnished by the board to the collector who shall amend his duplicate accordingly."

TAKE FURTHER NOTICE that the plaintiff on this motion will rely on the affidavit of Shelton Pitney, Esq., hereto annexed, and on the entire record in this cause.

TAKE FURTHER NOTICE that the plaintiff will apply at the same time and place for an order or a provision in the judgment to be entered that her costs in this action be taxed and ordered to be paid by the defendants.

Respectfully,

PITNEY, HARDIN & WARD
Pitney, Hardin & Ward,
Attorneys for Plaintiff.

March 14, 1944.

Affidavit of Shelton Pitney, Read in Support of Plaintiff's Motion for Summary Judgment

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of The Duke Endowment, *Plaintiff,* *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants.*	Civil Action No. 1665

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

SHELTON PITNEY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside in Harding Township, in the County of Morris, State of New Jersey, am an Attorney and Counsellor at law of New Jersey and a partner of Pitney, Hardin & Ward (formerly Pitney, Hardin & Skinner), 744 Broad Street, Newark, 2, New Jersey. From the inception of the above-entitled action said firm has been counsel for the plaintiff therein and I have been the member of the firm in active charge of the action, so I am thoroughly familiar with its facts, pleadings and proceedings.

Affidavit of Shelton Pitney, Read in Support of Plaintiff's Motion for Summary Judgment

2. The Somerset County Board of Taxation at an *ex parte* meeting held on June 26, 1941, and therefore after April first of each of the taxing years 1940 and 1941, adopted four certain resolutions whereby certain intangible personal property, on the alleged ground that said property had been wholly omitted in the assessment for said Hillsborough Township for each of said taxing years, was "assessed" and "ordered" to be entered on the tax duplicate of Hillsborough Township for assessment in said Township as follows: $60,054,424 in value thereof against plaintiff personally and $161,886,014 in value thereof against plaintiff as such Trustee for each of said taxing years; and each of said resolutions ordered that a copy of it be furnished the Collector of said Township "with direction that he enter upon the tax duplicate of said Township the said amount hereby assessed".

3. Said resolutions were adopted by said Board upon and in response to four certain written complaints of said Christopher G. Horner as the Collector and a resident and taxpayer of said Township presented to said Board at an *ex parte* special meeting of said Board held for the purpose on June 16, 1941 and further considered by said Board at an *ex parte* special meeting held for the purpose on June 17, 1941. Attached to said complaints as a part thereof were the affidavits of one James E. Muilaney. Said complaints demanded said action by said Board.

4. No notice whatever of said meetings or of said complaints or their consideration by said Board was given to plaintiff; nor was she present or represented or accorded any hearing at said meetings; and said resolutions were adopted by said Board without the "five days' notice in writing to the owner by the party complaining", the "due

examination" and the "hearing" made indispensable prerequisites in such cases to such action by said Board by the mandatory provision of Sec. 54:3-20 of the New Jersey Revised Statutes that:

> "On the written complaint of the collector or any taxpayer of the taxing district or of the governing body thereof that property specified has been omitted in the assessment the county board, on five days' notice in writing to the owner by the party complaining and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing, a transcript whereof shall be furnished by the board to the collector who shall amend his duplicate accordingly."

5. Each of said resolutions directed that there be given to plaintiff by registered mail "immediate notice of the entry of this assessment", a copy of the resolution certified by the Secretary of the Board and "a notice of the time and place of the next regular meeting of this Board to be held at 10:30 A. M. D. S. T. on Monday, July 14, 1941, at Somerset County Court House, Somerville, N. J." This was done as directed and constituted the only notice to plaintiff of said complaints, of said meetings and of said action of said Board.

6. On June 30, 1941, said Horner as Collector of said Township wrote letters to plaintiff enclosing bills for the taxes claimed to be due said Township by reason of said action of said Board, namely, by plaintiff personally $1,873,608.02 for the taxing year 1940 and $1,861,687.14 for the taxing year 1941, and by plaintiff as such Trustee $5,-

Affidavit of Shelton Pitney, Read in Support of Plaintiff's Motion for Summary Judgment

050,843.63 for the taxing year 1940 and $5,018,466.43 for the taxing year 1941. These bills were dated June 30, 1941, and as to them the letters said:

> "Please take notice that interest and penalty at the rate of 6% per annum are running from the date of this bill."
>
> "Please take further notice that this letter is a formal demand for payment of the within bill forthwith and unless payment is received accordingly I will be obliged to proceed according to law."

7. These paragraphs of these letters referred not only to Secs. 54:4-64 to 73 of the New Jersey Revised Statutes authorizing collectors to collect taxes with interest and penalties but also to the following sections thereof:

> Sec. 54:4-1, providing that any person "assessed for personal property shall be personally liable for the taxes thereon".
>
> Sec. 54:4-78, authorizing collectors to collect such taxes "by distress and sale of any goods and chattels" of the person liable.
>
> Sec. 54:4-79, providing that "the collector may in person or by deputy" arrest and imprison until payment the person liable for such taxes.
>
> Sec. 54:4-80, providing that a copy of the tax entry certified by the collector to be truly taken from his duplicate "shall be sufficient warrant for the distress and sale or arrest and imprisonment authorized by" said Sections 54:4-78 and 54:4-79.

8. The complaint in this action was filed in this court and served on the defendants on July 14, 1941. It set forth,

among other things, the adoption of said resolutions on the said complaints of said Horner by said Board at its *ex parte* meeting on June 26, 1941 and said presentation for payment of said tax bills by said collector, together with true copies of said resolutions, tax bills and letters. It averred that by said action said Board had undertaken after April first of each of the taxing years 1940 and 1941 to assess and enter for assessment for each of said taxing years in said Township intangible personal property on the alleged ground that said property had been wholly omitted in the assessment for said Township for each of said taxing years. It alleged that said Board had adopted said resolutions without plaintiff having been given any notice or hearing whatever and without any compliance with said provision of said Sec. 54:3-20, which it quoted. And it charged that by reason of said facts the said action of said Board, the resolutions thereby adopted, and all the entries and assessments of properties made and tax bills presented by reason of said action and resolutions were in violation of the laws of New Jersey and wholly null and void and should be so declared and adjudged by this Court for lack of jurisdiction and authority in said Board so to act. See especially paragraphs 17 and 21 through 32 of the complaint.

9. The answer of the defendants alleged that in adopting said resolutions said Board had acted in conformity to the provisions of said Section 54:3-20 that:

> "The county board of taxation shall by resolution cause to be entered upon the tax duplicate a proper assessment against any property omitted by the assessor. The board shall then give immediate notice of such entry and of the time and place of its

next meeting to the owner of the property affected and furnish a copy of the entry to the clerk or collector of the taxing district who shall enter it on his tax list."

which it claimed conferred full authority upon such Board for such action, and denied that plaintiff had not been accorded the notice and hearing required by the laws of New Jersey. See paragraphs 17, 23, 28 and 29 of the answer.

10. The questions of fact with respect to said action of said Board have now been settled by the testimony of its members, to wit, William Lifgren, its President, W. W. Davenport, Jr., its Vice President, and Angelo R. Soriano, in their depositions duly taken and filed in this Court in this action on behalf of the plaintiff, which depositions are by reference made a part of this affidavit as if herein set forth at length.

By this testimony it is established that said written complaints of said Horner, as such Collector, resident and taxpayer, with the affidavits of one James E. Mullaney forming a part thereof, were presented to an *ex parte* meeting of said Board specially called for the purpose at the request of Clarkson A. Cranmer, the attorney for said Township, who, with Alfred L. Kirby, the agent of said Township for securing and collecting said assessments, appeared and insisted that said Board act on said complaints solely on said complaints and the claimed authority of the provisions of Section 54:3-20 quoted in paragraph 9 hereof and without plaintiff being accorded any notice of hearing and without any compliance with the provision of said section quoted in paragraph 4 hereof, and that said Board, after considering

said provisions of said section at other *ex parte* meetings of said Board, did at its *ex parte* meeting on June 26, 1941, adopt said resolutions as insisted by said Cranmer and Kirby solely upon the statements made in said complaints, without plaintiff being accorded any notice or hearing, without any other proof, inquiry, investigation or examination and without any compliance with the provision of said section quoted in paragraph 4 hereof.

Thus said Lifgren testified that:

Mr. Cranmer called him on the phone and asked him "to call a special meeting of the Board to consider something of importance that would be brought up at our meeting" (pp. 315-6). The meeting was held June 16, 1941, with Messrs. Lifgren and Soriano and the Secretary of the Board and Messrs. Cranmer and Kirby present (pp. 317-8). Mr. Cranmer presented the said complaints of Horner (which in said deposition are referred to as P-10, P-11, P-12 and P-13 for Identification) and that was the first knowledge the members of the Board had of them (pp. 315-6). Mr. Kirby "urged" that "no hearing was necessary by reason of the provision of some section of the law" (p. 321) and either Kirby or Mr. Cranmer talked "of Hillsborough mandamusing us before the Supreme Court to make us put it on if we did not put it on" (pp. 323-4), said "that is what could be done if we did not do it" (p. 324). Because of the absence of Mr. Davenport the meeting was adjourned without other action to June 17, 1941 (pp. 318-9).

At the meeting on June 17, 1941, there were present the three members and the Secretary of the

Board, "there was discussion of the question of a hearing" and "the Board discussed both of these paragraphs very thoroughly. We decided that it was all over our heads. We dumped it into the lap of the Attorney General for his final summation" (pp. 320-2).

On the afternoon of June 17, 1941, Mr. Lifgren, Mr. Davenport and the Secretary of the Board went to Trenton to see the Attorney General and there they talked to Mr. John Solan, Assistant Attorney General, who told us to leave the papers there, that he would look them over and let us know at a later date" (pp. 321-2).

On June 24, 1941, the three members and the Secretary of the Board saw Mr. Solan again in the State House in Trenton, wanting to know "what we are going to do with these four complaints"; they discussed with him "the advisability of having a hearing as you had had in the Duke Power case after the complaint was filed" and "these two specific paragraphs was brought up as was the day Mr. Cranmer appeared here and Solan agreed with the Township Attorney that these paragraphs both contradicted one another, either one would answer the purpose" (pp. 323-4).

"So we left there with just as much knowledge as to what to do as we had when we went there" (p. 323). "We went out in the park there. We sat on the bench because Commissioner Davenport had to leave us, go on his way in his business. We sat on the bench, Commissioner Davenport, Soriano, the Secretary and myself sat on the bench; we decided

right there and then we would put it on" (pp. 325-6). We "finally concluded at that time that at the next meeting of the Board we would put them on" p. 326).

This next meeting was held on June 26, 1941, with the three members and the Secretary of the Board, Messrs. Cranmer and Kirby, Mr. Grover Kipsey for the Board of Freeholders, and two newspaper reporters present; there was no discussion of the assessments; "Mr. Cranmer presented the forms of resolutions already prepared" and as he read them to the meeting they were adopted by the Board; and so the Board acted (pp. 327-8).

"In making the assessments involved in this case", the Board acted under the first two sentences of Sec. 54:3-20 "to omit the hearings" and did not purport to act under "the sentences following the two sentences which you have read into the record", "because we didn't give any hearing" (pp. 338-41). "The action taken on November 22nd", on which day the "Board adopted resolutions fixing an assessment against Duke Power Company of $21,953,000" was "taken on the authority of those two sentences", referring to "the first two sentences of 54:3-20" (pp. 345-6).

"The Board relied on those complaints in making its resolutions" adopted June 26, 1941, and "accepted the statements of facts in Mr. Mullaney's affidavit as accurate" and "that was also true of the statements of facts in Mr. Horner's affidavits" (p. 346). "The Board's inquiry and examination into the facts were limited to a consideration of the ap-

plication of Mr. Horner and Schedule A and the affidavit of Mr. Mullaney annexed thereto, and no persons were called or examined or sworn at all, or any record taken" and "Horner wasn't there" and "Mullaney wasn't there" and "Kirby wasn't examined under oath" (pp. 365-6).

On cross examination by Mr. Cranmer, Attorney for the Township, Lifgren reiterated: "Mr. Kirby on June 16th urged that there be no hearing in this matter" and urged the Board that "there was a couple of paragraphs there, one where a hearing was —you could give them a hearing that would drag this thing out; then by this other paragraph you could get away without the hearing and put the assessment on" (p. 370).

Mr. Davenport testified that:

"In voting for the resolutions on June 26, 1941, he relied for his 'facts entirely upon P-10, P-11, P-12 and P-13', the said Horner complaints; and that when these resolutions recited that said complaints (called 'applications' therein) were 'supported by proof' and that said Board was acting 'after careful consideration of the application and proof and after due inquiry and examination into this matter' these recitals referred only to said applications and their examination and there was no other proof, inquiry or examination whatever (pp. 610, 614-5).

Mr. Soriano testified exactly as did Mr. Davenport (pp. 603-5).

(The figures in the foregoing refer to pages of the depositions.)"

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11. The question of law with respect to the meaning, application and effect of said provisions of Sec. 54:3-20 has now been settled in accordance with the claim of plaintiff in her complaint and contrary to the claim of the defendants in their answer in the like case of *Duke Power Company* v. *State Board*, 129 N. J. L. 449 (Sup. 1943) which annulled identical action by said County Board for non-compliance with the provision of said Section 54:3-20 on which plaintiff relies in this action and on March 9, 1944 the Court of Errors and Appeals unanimously affirmed the judgment in said case "on the opinions below".

My firm, Pitney, Hardin & Ward (formerly Pitney, Hardin & Skinner) was counsel for the Duke Power Company from the inception of said litigation and I have been throughout the member of said firm in active charge of the litigation, so that I am entirely familiar with the facts, pleadings, issues, proceedings and decision.

On August 16, 1939, said Township of Hillsborough, acting by its Collector, said Horner, filed with said Somerset County Board of Taxation its written complaint, of which it gave the Power Company the required "five days' notice in writing". Therein it alleged that some cash and other intangible personal property belonging to said Power Company on October 1, 1938, had been wholly omitted in the assessment for said Township for the taxing year 1939 and demanded that said Board enter said property for assessment for said taxing year by said Township. On motion of the Power Company the Board struck from said complaint for insufficient description all the property items except cash. The Township neither sought a review of this action nor filed a new or amended complaint. The Board heard the cash item on November 13, 1940, and on November 18, 1940, adopted a resolution whereby it

entered for assessment by said Township for the taxing year 1939 cash in the amount of $8,143,159 which it found had been owned by the Power Company on October 1, 1938, and wholly omitted in the assessment for said Township for said taxing year 1939.

Just four days later, on November 22, 1940, without according the Power Company any notice or hearing whatever and without any compliance with said provision of Section 54:3-20, on which plaintiff relies in this action, said Board held "a regularly called meeting" at which there was presented and read the written complaint (called an "affidavit") of said Horner, the Collector of said Township, and with it an affidavit of said James E. Mullaney, wherein said Horner as a taxpayer of said Township alleged that said Power Company on October 1, 1938, had owned intangible person property of the total value of $21,953,125, of which the whole had been omitted in the assessment for said Township for the taxing year 1939 and only the said cash had been entered for assessment by said Board for said taxing year; and said complaint demanded that said Board enter the residue of said omitted property for assessment by said Township for said taxing year 1939.

Immediately upon the reading of said complaint said Board at its meeting on November 22, 1940, and so after April first of the tax year 1939, adopted a resolution whereby said Board (1) "resolved that there be entered upon the tax lists and duplicates for Hillsborough Township for the taxing year 1939 a total assessment of $21,953,124.00 * * * thus amending an assessment determined by this Board on November 18th, 1940, against Duke Power Company, a New Jersey Corporation, covering omitted

'cash' only, which total amount represents the true value of intangible personal property wholly omitted by the local assessor for Hillsborough Township, Somerset County, New Jersey, on the assessing date, October 1st, 1938" and (2) directed that a copy of said resolution, duly certified, be given the Collector of said Township and that the Power Company be given a like copy with immediate notice of the entry of said amended assessment and of the time and place of the next meeting of said Board on Monday, December 2, 1940, which was accordingly done.

Thus we see, as the fact is and as said Lifgren testified, that said Board in adopting the four resolutions on June 26, 1941 relied on the very same sentences of said Section 54:3-20 and followed the very same procedure it had relied upon and followed, and at the insistence of the very same people, in adopting the resolution on November 22, 1940, in the Power Company case, and that said resolutions were in each case adopted for the same purpose, namely, to enter for assessment after April first of the tax year involved property alleged to have been omitted in the assessment for said tax year and so in this respect the Power Company case presented the same legal question presented in this action, namely, the true meaning, application and effect of said Section 54:3-20 in such a case.

On this question the Supreme Court in its opinion by Mr. Justice Bodine thus said and held in the Power Company case:

> "N. J. S. A. 54:3-20 provides a method for the inclusion of property omitted by the assessor and another method for the inclusion of property omitted from the assessment. Let us glance first at the procedure when property is omitted from the assess-

ment. 'On the written complaint of the collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the county board, on *five days'* notice in writing to the owner by the party complaining, and after *due examination and hearing*, may enter the omitted property on the duplicate *by judgment rendered within ten days after the hearing. * * * Such proceeding may be brought within one year from the date when taxes on real property become a lien'*. The italics supplied.''

''The defendants contend that their proceeding were proper because it was under the first part of N. J. S. A. 54:3-20 which reads as follows: 'The county board of taxation shall, by resolution, cause to be entered upon the tax duplicate a proper assessment against any property *omitted by the assessor*. The Board shall then give immediate notice of such entry and of the time and place of its next meeting to the owner of the property affected, and furnish a copy of the entry to the clerk of collector of the taxing district, who shall enter it on his tax list'.''

''There is a vast difference between the inclusion of property omitted by the assessor and property omitted from the assessment.''

''N. J. S. A. 54:4-55 provides: 'The county board shall, on or before April first in each year, cause the corrected, revised and completed duplicates, certified by it to be a true record of the taxes assessed, to be delivered to the collectors of the various taxing districts in the county, and the tax lists shall remain in the office of the board as a public record.'

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This limits action with respect to property omitted by the assessor to April 1, 1939."

"The assessment was made on the complaint of an aggrieved taxpayer, and the procedural direction of the statute required a specific notice to the owner of the precise property claimed to be omitted from the assessment and a hearing upon notice and a deliberate judgment."

"The underlying question in the case is the proper construction of the statute N. J. S. A. 54:3-20 and a determination as to whether there is a difference in the phraseology 'property omitted by the assessor' and 'property omitted in the assessment'. Both phrases have occurred in our statutes since P. L. 1848, p. 230, was enacted. The first statute had two paragraphs. They were combined in substantially the present form in the revision of 1903. If property in a taxing district is omitted by the assessor it must be added to the assessment before April 1st. Its addition decreases the amount of taxes to be raised since the ratables are thereby increased. The taxpayer is not embarrassed. He knows he will have a tax to pay and is liable anyway even if the property was not included in the assessment. However, if the property is added to the assessment after the rate has been fixed it gives rise to a municipal windfall. There is no harm in this if there were due notice and a fair hearing by the county board and a judicial determination by it. The procedure adopted in this case was not in accordance with the statute. Property omitted by the assessor must be added before April 1st, so that the

rate of taxation may be determined. Thereafter, the addition of property omitted from the assessment must be in accordance with the part of the statute first quoted. *Mitsch* v. *Riverside*, 86 N. J. L. 603; *Shillingsburg* v. *Greenwich*, 83 Id. 129."

"Since none of the property in question was liable to taxation in Hillsborough Township we need not consider the application of the remedial statutes N. J. S. A. 54:4-58 to 54:4-60. However, the remedial statutes we do not find to have been a substitute for proper assessment. Their application has been only in instances where property has been omitted by the assessor or has been assessed in the name of one other than the true owner. *Musconetcong Iron Works* v. *Borough of Netcong*, 90 N. J. L. 58; *Manistee Iron Works* v. *Raritan*, 12 N. J. Misc. 143. But they do not apply where the statute for the addition of property omitted from the assessment is not complied with. *Mitsch* v. *Riverside*, 56 N. J. L. 603; *Shillingsburg* v. *Greenwich*, 83 Id. 129."

These extracts from the opinion of the Supreme Court in the *Duke Power* case correctly portray that decision on the meaning, application and effect of said Section 54:3-20 and the remedial statutes in cases like that involved therein and in this action and constitute the opinion on these subjects adopted by the Court of Errors and Appeals by its affirmance "on the opinion below".

12. In the Power Company case I, together with Mr. William J. Brennan, Jr., who was then my partner, appeared before said Board on December 2, 1940, in response to said notice that the next meeting of the Board would be

held on that date; and we were refused a hearing, the Board informing us through its President that:

> "We feel that the case is closed so far as we are concerned. * * * We didn't ask you to be here. We simply notified you that we would have our regular meeting today and the reason for that was that if desired to examine the records of that meeting (of November 22, 1940) it was your privilege to do it.
>
> "Mr. Brennan: That was the sole purpose?
>
> "President Belli: That is the sole purpose, nothing else."

Recognizing that in this action said Board was proceeding in the adoption of said resolutions on June 26, 1941, just as it had proceeded in the Power Company case in adopting the resolution on November 22, 1940, and having this abundantly confirmed by said letters of said Collector dated June 30, 1941 presenting said tax bills for payment "forthwith," notwithstanding the notice that the next meeting of the Board would be on July 14, 1941, no appearance was made by or for the plaintiff on July 14, 1941, and by paragraph 26 of the complaint in this action it was alleged that

> "although the letters from said Secretary enclosing certified copies of the said resolutions stated that the next regular meeting of said Somerset County Board of Taxation would be held in Somerville, New Jersey, on July 14th, 1941, said Somerset County Board of Taxation intended and considered said resolutions, and each of them, as constituting final determinations and assessments, and said Board by said letters or otherwise did not intend to suspend the collection of the taxes that might be owing in

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respect of said assessments or to afford plaintiff any opportunity to be heard before said assessments became final."

Complete confirmation of this allegation and of the aforesaid procedure by and attitude of said Board has now been given by Mr. Lifgren in his said deposition, wherein he testified:

"Q. Where there any appearances there (July 14, 1941)? A. No, there wasn't, other than the United States Marshal who served us with the summons" (p. 371).

"Q. Did the members of the Board consider that the adoption of the Resolutions (on June 26, 1941) was the last step it had to do in the matter? A. I thought so.

Q. There was no occasion after you had adopted the Resolutions to hear or consider anything else that might be suggested or raised? A. As I said before, we were led to believe by the paragraphs which appeared to me to contradict one another that this suit was started this way to eliminate a hearing" (p. 330).

"Q. Do you recall the Board's action on a similar affidavit of Mr. Horner in the Duke Power Company case when on November 22nd you added an assessment against the Duke Power Company of $21,953,125? A. Yes, sir.

Q. Do you remember that in these minutes provision was made for a meeting to be held on December 2, 1940? A. Yes, sir.

Q. That is the same kind of a notice which was contemplated in your minutes of June 26th for a meeting on July 14th, isn't it? A. Yes" (341).

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"Q. The action that you took on the 26th of June in this case is identical with the action that you took on November 22nd in the Duke Power case? A. Yes, that is right."

"The procedure in both cases was the same" (p. 376) and had the plaintiff herein or her representatives "come to your meeting of July 14th, as I understand your testimony, we would have had the same hearing on July 14th that had been given us on December 2nd" (p. 380), at which meeting "President Belli stated that the notice of the meeting had been sent to Duke Power Company to give them an opportunity, if so desired, to come in and examine the records pertaining to the Board's decision in the case" and the attorneys and officers of the Duke Power Company appearing at the meeting of December 2, 1940, were told by said President Belli that the case was closed so far as the Board was concerned (pp. 379-80).

Q. When you gave the Duke Power Company notice of a meeting of December 2nd, a representative of the Power Company appeared on December 2nd, the Board stated that there was nothing further that could be done with respect to the Resolutions, that the Board could not change them, that the Board would not take any evidence, that the Board would not swear a stenographer, that the Board would not take any exhibits, isn't that correct? A. Yes, that is it." (p. 335).

Q. "The Board considered, when it adopted its Resolutions of June 26th that it had done everything that it could do in the matter of these assessments? A. That is right" (p. 335).

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13. In addition, it is the law of New Jersey, established by many decisions of the courts of said State, that where notice or examination or hearing its required in advance of a judgment making or increasing an assessment, as does the said provision of Section 54:3-20 of which plaintiff relies, such a judgment is not validated by giving a subsequent notice for a subsequent hearing. See: *Jersey City* v. *Board of Equalization*, 74 N. J. L. 753 (E. & A. 1907); *Hoboken L. & I. Co.* v. *Anderson*, 39 N. J. L. 82 (Sup. 1875); *Bergen R. R. Co.* v. *State Board*, 98 N. J. Eq. 858 (E. & A. 1923); *State* v. *Newark*, 25 N. J. L. 399 (Sup. 1856); *State* v. *Jersey City*, 24 N. J. L. 662 (Sup. 1855). So that plaintiff's non-appearance on July 14 1941, did not prevent the resolutions adopted by said Board on June 26, 1941, from being wholly null and void for failure to conform to the provision of Section 54:3-20 requiring notice and hearing prior to any board action. This is what the Supreme Court held when it said in its opinion in the *Duke Power* case,

> "Property omitted by the assessor *must* be added before April 1st, so that the rate of taxation may be determined. Thereafter the addition of property omitted from the assessment *must* be in accordance with the part of the statute first quoted (which is the part of Section 54:3-20 on which plaintiff relies). *Mitsch* v. *Riverside*, 86 N. J. L. 603; *Shillingsburg* v. *Greenwich*, 63 Id. 129." (Italics supplied.)

14 The aforesaid decisions of the Courts of New Jersey establish the law of said State and the meaning, application and effect of said provision of said Section 54:3-20 in this action, and as such they are binding and controlling on this Court in the above entitled cause and require this Court in this action to hold and by its judgment to declare

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that the said resolutions, assessments and taxes are wholly null and void because in violation of the laws of said State and particularly of the provision of said Section 54:3-20 on which plaintiff relies.

15. The complaint in this action also alleges with particularity that said resolutions, assessments and taxes were wholly null and void and should be so held and declared by the judgment of this Court in said cause because they were in violation of the due process and equal protection clauses of the Constitution of the United States, and there was no adequate remedy therefor under the laws of New Jersey, in that thereby plaintiff personally and as such Trustee has been and is being singled out with deliberate intent to impose on her in each of such capacities an enormous, fraudulent, illegal and discriminatory burden of taxation through taxing her in each of such capacities for each of said tax years upon and with respect to intangible personal property, whereas the taxing authorities in said Hillsborough Township and throughout said Somerset County have consistently, continuously, systematically, notoriously and intentionally for years, including both of said tax years, entirely failed to assess such property for taxation or to impose taxes by reason of ownership or custody of such property, whether personally or as a fiduciary.

16. Since the filing and serving of said complaint plaintiff has caused to be taken and filed in this cause in advance of trial the depositions of said Christopher G. Horner, the Collector of said Township, of said Charles V. N. Davis, the Assessor of said Township, of said William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano, the members

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who constituted the said County Board when it adopted said resolutions, of Edward Lindstrom and J. Irvine Stryker, the majority members of the Township Committee of said Township, of Everest L. Belli, a former member and president of said County Board, of assessors of every taxing district in said Somerset County and of two former assessors of such a taxing district. These depositions are hereby by reference made a part of this affidavit as if set forth herein at length.

All these witnesses testified that the assessments of intangible personal property made against plaintiff, personally and as such Trustee, in this action were the first such assessments of such property to their knowledge in said Somerset County or in any taxing Township or District thereof. Thus said Horner testified that he had been the Collector of said Township since 1910 and that "we have never had any intangibles assessed to my knowledge"; said Davis testified that he had been Assessor for five or six years, which included said two tax years, and that there had not been "assessed any intangible personal property, that is bonds or stocks, cash, bank accounts or accounts receivable or mortgages on foreign real estate owned by any of the taxpayers" who were inhabitants of said Township; said Lindstrom testified of the assessments involved in this cause: "This is the first time it had ever been brought out in Hillsborough to tax anybody on stocks, bonds or bank accounts or other intangibles"; said Lifgren testified: "I believe this is the first time it has ever been brought out that such a tax has been put onto anyone"; said Soriano testified that the assessments involved in this cause "stand out alone as an assessment against intangible property in the county"; and said Davenport testified that

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"all personal property assessments are assessments as the assessors in the county have testified against tangible property".

17. Said complaint also alleged, and plaintiff testified under oath in a pretrial deposition taken January 20, 1942, in behalf of the defendants and duly filed in this Court in this action (which said deposition by reference is hereby made a part of this affidavit as if herein set forth at length), that prior to October 1, 1940, plaintiff in good faith and intentionally had become, continued and still was a domiciliary and citizen of the Territory of Hawaii, that she had never held or had in her custody or under her control any of the property of said The Duke Endowment as a Trustee thereof or otherwise, and that all of her intangible personal property had been located out of New Jersey and since prior to October 1, 1940 had had no situs in said State, and alleged that on said account said resolutions and assessments were in violation of the due process clause of the Constitution of the United States and wholly null and void because they were attempts to tax property situated outside of New Jersey and in so doing to impose personal liabilities upon a non-resident of said State.

18. The depositions hereinbefore mentioned and by reference made a part of this affidavit, together with the depositions of said Alfred L. Kirby, said James E. Mullaney and one J. Glenn Anderson, likewise taken and filed in this Court in this action and now made by reference a part of this affidavit as if set forth herein at length, informed plaintiff for the first time, after the filing of her complaint, that said action of said Board on June 26, 1941 had been secured by intentional, malicious fraud, on which account said Lif-

gren testified in his said deposition that had said Board known the real facts it would not have adopted the resolutions and made the assessments (Dep. pp. 325, 347-66, 374-5, 385). This caused plaintiff to move this Court for leave to file an amended and supplemental complaint settling up said fraud and by reason thereof asking that said resolutions and assessments be set aside and annulled and plaintiff recover from those who perpetrated said fraud the damages their wrongful conduct had occasioned her together with punitive damages. In an opinion filed on January 7, 1944 this Court granted said motion to file said amended and supplemental complaint, subject to motion to strike, but no order has been entered for such filing and no such filing has occurred, and in view of the clear and complete authority of said *Duke Power Company* case by reason of the decision of the Court of Errors and Appeals therein just rendered that said resolutions adopted by said Board on June 26, 1941 and all done under and pursuant thereto are wholly null and void on the ground urged in the complaint based on the said provision of Section 54:3-20 there seems no reason to delay the final disposition of this case on said ground by now filing said amended and supplemental complaint or entering an order for that purpose.

19. Said Township, its present and future officials and representatives, may endeavor to enforce and collect said illegal and void assessments and taxes unless prevented by the judgment of this Honorable Court.

Shelton Pitney
SHELTON PITNEY

(Sworn to March 14, 1944.)

Notice of Motion to Dismiss Complaint, Dated March 31, 1944

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, individually and as Trustee of the Duke Endowment, *Plaintiff*, *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants.*	Civil Action No. 1665

To Messrs. PITNEY, HARDIN AND WARD,
Attorneys for Plaintiff,
744 Broad Street,
Newark, 2, N. J.

SIRS:

PLEASE TAKE NOTICE that on Monday, the 27th day of March, 1944, at 10:30 A. M. (E. W. T.), or as soon thereafter as counsel can be heard, at the Court Rooms of the United States District Court, for the District of New Jersey, Post Office Building, Federal Square, Newark, New Jersey, we shall move the Court to dismiss the complaint heretofore filed by the plaintiff and the plaintiff's alleged declaratory judgment suit as set forth therein on one or more of the following grounds:

Notice of Motion to Dismiss Complaint, Dated March 31, 1944

1. That the alleged cause of action set forth in the complaint is not within the jurisdiction of the United States District Court.

2. That the Court in appropriate exercise of its discretion should not entertain jurisdiction in this matter.

3. That the plaintiff has a plain, adequate and complete remedy in the administrative bodies and in the Courts of the State of New Jersey.

Dated March 21, 1944.

Respectfully,

Clarkson A. Cranmer,
Attorney for Defendants.
Kessler & Kessler
Cox & Walburg
Of Counsel.

By Samuel I. Kessler
Harry E. Walburg.

Opinion of Fake, *D. J.*, Denying Defendants' Motion to Dismiss Complaint and Granting Plaintiff's Motion for Summary Judgment

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment, *Plaintiff*, *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, N. J., CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough; and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants*.	Civil Action No. 1665

APPEARANCES:

Messrs. PITNEY, HARDIN & WARD, Attorneys for Plaintiff; by SHELTON PITNEY, Esq., of Counsel.

CLARKSON A. CRANMER, Esq., Messrs. KESSLER & KESSLER, by SAMUEL I. KESSLER, Esq., Messrs. COX & WALBURG, by HARRY E. WALBURG, Esq., Attorneys for Defendants.

FAKE, *District Judge*:

The issues here arise on three motions which will be considered in numerical order:

Opinion of Fake, D. J., Denying Defendants' Motion to Dismiss Complaint and Granting Plaintiff's Motion for Summary Judgment

1. This is a motion for summary judgment declaring four certain resolutions, referred to in Paragraphs 18 and 19 of the Complaint, adopted by the Somerset County Board of Taxation on June 26, 1941, and the assessments of properties made and tax bills issued thereon by the Township of Hillsborough, to be null and void for the reasons alleged in Paragraphs 17 and 21 through 32 of the Complaint herein as by reference thereto will more fully appear.

In this connection the uncontroverted affidavit of Shelton Pitney filed herein discloses that the said resolutions were adopted and the assessments were made without notice to the plaintiff either in her individual or representative capacity, contrary to the form of the Statute, Sec. 54:3-20 of the Revised Statutes of New Jersey, as construed in *Duke Power Co.* v. *State Board of Tax Appeals*, 129 N. J. L. 449, 30 Atl. 2nd 416, affirmed 131 N. J. L. 275, 36 Atl. 2nd 201. The said resolutions and subsequent proceedings thereon by the Township of Hillsborough are therefore null and void and the motion for summary judgment in favor of plaintiff, individually and as trustee against the Township of Hillsborough and Christopher G. Horner, Collector, is granted.

2. This is a motion directed by defendants to a dismissal of the complaint on the ground that (a) the court has no jurisdiction, (b) the court in its discretion should refuse to entertain jurisdiction, (c) that plaintiff has an adequate remedy in the State administrative bodies and in the State courts.

No serious argument has been directed to sustain lack of jurisdiction. As to the discretionary power of the court

the case of *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, is cited as authority. The allegations of discrimination in the Complaint herein differentiate the instant case from that above cited and this court has heretofore passed on it in an opinion filed on July 30, 1942. I there considered carefully the subject of discrimination as it is found in the case law of the State finding that the existing State law is in conflict with the Federal constitution. The reasoning there applies here as well. The point is therefore not well taken here.

As to the adequacy of the remedies before the administrative bodies of the State, it is my view that even though by virtue of the ruling in *Duke Power Co.* v. *State Board of Tax Appeals*, supra, it may be said that there is an adequate State administrative remedy, there is no point in sending the issue there when this court can and does retain jurisdiction on the ground of discrimination. See *Chicago G. W. Ry.* v. *Kendall*, 266 U. S. 94. The motion is denied.

3. This is a motion for judgment in favor of the defendant Charles V. N. Davis, Assessor, on the ground that there is no genuine issue of any material fact as to him. The lack of an issue against him is conceded. A judgment will therefore be entered in his favor against the plaintiff.

The prevailing parties are entitled to their respective costs to be taxed.

Judgment

UNITED STATES DISTRICT COURT

District of New Jersey

Civil Action No. 1665

[Same Title]

The plaintiff in the above-entitled cause having duly filed herein a motion for summary judgment, and the defendants having filed a cross motion to dismiss the complaint herein and the plaintiff's suit on the grounds (1) that the alleged cause of action set forth in the complaint is not within the jurisdiction of the United States District Court, (2) that the court in appropriate exercise of its discretion should not entertain jurisdiction and (3) that the plaintiff has a plain, adequate and complete remedy in the administrative bodies and in the courts of the State of New Jersey; and the defendant, Charles V. N. Davis, having separately applied for a summary judgment herein on the ground that there is no genuine issue of any material fact as against him and that the defendant is entitled to judgment as a matter of law;

And said motions having been argued before the court by Shelton Pitney, Esq., of Pitney, Hardin & Ward, attorneys for the plaintiff, and by Harry E. Walburg, Esq., of Cox & Walburg, and Samuel I. Kessler, of Kessler & Kessler, of counsel with the defendants, and the court having considered the arguments of counsel aforesaid and their respective briefs and the entire record in this cause, including the affidavit annexed to the plaintiff's notice of motion for summary judgment (and the depositions therein referred to) and the affidavit annexed to the motion of the defendant, Charles V. N. Davis:

Judgment

It is, on this 7th day of Aug., 1944, ORDERED, ADJUDGED and DECREED:

1. That the complaint herein states no genuine issue as against the defendant Charles V. N. Davis and that for that reason judgment be, and it is hereby, entered in his favor against the plaintiff and the complaint be, and the same is hereby, dismissed as to said defendant Charles V. N. Davis.

2. That the motion of the defendants, Township of Hillsborough, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of said Township of Hillsborough, to dismiss the complaint and the plaintiff's suit be and the same is hereby denied.

3. That the plaintiff's motion for summary judgment against the defendants, Township of Hillsborough, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, be and the same is hereby granted, and that the four certain resolutions adopted by the Somerset County Board of Taxation at its *ex parte* meeting held on June 26, 1941, as well as all entries and assessments of properties made and tax bills presented in and for said Township of Hillsborough by reason of said resolutions are wholly null and void for the reasons that said resolutions were adopted after April first of each of the tax years 1940 and 1941 upon and in response to the written complaints (in said resolutions called "applications") of the defendant, Christopher G. Horner, the Collector and a resident and taxpayer of the defendant, Township of Hillsborough, so demanding and presented to said Board for that purpose and by said resolutions said Board undertook at an *ex parte* meeting of said Board to assess, and to enter or cause to be entered on the tax lists and duplicates of said Township for assessment in and by said Township for each of said tax years, the intangible

personal properties embraced in said resolutions, entries and assessments on the ground that said properties had been wholly omitted in the assessment for said Township for each of said tax years, without the plaintiff, either personally or as a trustee of the Duke Endowment, being given any notice of said complaints or meeting or being present or represented or accorded any hearing at said meeting and in particular without plaintiff, in either of said capacities, having been given the "five days' notice in writing to the owner by the party complaining" or accorded by said Board the "due examination" or the "hearing" of a judicial character made indispensable prerequisites to the adoption of such resolutions by the mandatory provision of Section 54:3-20 of the Revised Statutes of New Jersey that:

> "On the written complaint of the collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the county board, on five days' notice in writing to the owner by the party complaining, and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing a transcript whereof shall be furnished by the board to the collector, who shall amend his duplicate accordingly."

4. That judgment be entered for her costs to be taxed in favor of the plaintiff and against the defendants, Hillsborough Township, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and that judgment be entered for his costs to be taxed in favor of the defendant, Charles V. N. Davis, against the plaintiff.

GUY L. FAKE,
U. S. D. J.

Notice of Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, *Plaintiff*, *vs.* TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants*.	Civil Action No. 1665

NOTICE IS HEREBY GIVEN that Township of Hillsborough, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, defendants above named, hereby appeal to the Circuit Court of Appeals for the Third Circuit, from the final judgment entered in this action on August 7, 1944.

Dated: November 3, 1944.

KESSLER & KESSLER
By Samuel I. Kessler
9 Clinton Street
Newark, New Jersey.

COX & WALBURG
By Harry E. Walburg
Raymond-Commerce Bldg.
Newark, New Jersey
Attorneys for Appellants

CLARKSON CRANMER
Attorney for Appellants

SAMUEL I. KESSLER
Of Counsel

Statement of Points on Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, *Plaintiff*, vs. TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, *Defendants*.	Civil Action No. 1665

To MESSRS. PITNEY, HARDIN AND WARD
Attorneys for Plaintiff,
744 Broad Street,
Newark 2, New Jersey.

SIRS:

PLEASE TAKE NOTICE that the appellants, Township of Hillsborough and Christopher G. Horner, state that the points upon which they intend to rely on the appeal of this action are as follows:

1. The United States District Court for the District of New Jersey erred in entering summary judgment in favor of the plaintiff and against the appellants.

Statement of Points on Appeal

2. The United States District Court for the District of New Jersey erred in refusing to dismiss plaintiff's complaint.

3. The United States District Court for the District of New Jersey did not have jurisdiction of the subject matter set forth in the plaintiff's complaint under the declaratory judgment act.

4. The United States District Court for the District of New Jersey erred in assuming jurisdiction of the plaintiff's complaint and the alleged cause of action set forth therein.

5. The plaintiff has a plain, speedy and adequate remedy in the administrative bodies and in the Courts of the State of New Jersey.

6. The plaintiff failed to avail herself prior to the filing of her complaint of the plain, speedy and adequate remedy provided by the administrative bodies and the Courts of the State of New Jersey.

7. The United States District Court for the District of New Jersey erred in retaining jurisdiction of the complaint after a dismissal of the complaint as to the defendants, William Lifgrin, W. W. Davenport and Angelo R. Soriano, on the ground that said defendants are necessary and indispensable parties to the action.

CLARKSON A. CRANMER
COX AND WALBURG
KESSLER AND KESSLER,
Attorneys for Defendants,
Township of Hillsborough
and Christopher G. Horner

By SAMUEL I. KESSLER

APPENDIX TO APPELLEE'S BRIEF

Order dismissing complaint as to defendants, William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano i

Designation by plaintiff of additional portions of record on appeal ii

On motion of appellants to limit record on appeal v

Exhibits 7 and 8 attached to Complaint vii

Exhibits 9 and 10 attached to Complaint ix

Exhibits 11 and 12 attached to Complaint xi

Exhibits 13 and 14 attached to Complaint xiii

Appendix

United States District Court for the District of New Jersey

Civil Action No. —

Doris Duke Cromwell, Individually and as Trustee of the Duke Endowment, Plaintiff,

vs.

Township of Hillsborough, and others, Defendant

Order Dismissing Complaint as to Defendants, William Lifgren, W. W. Davenport, Jr. and Angelo R. Soriano

The defendants, William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, the members constituting the Somerset County Board of Taxation, having applied to this court, on notice to Pitney, Hardin & Skinner, attorneys for the plaintiff, for an order dismissing the complaint herein as to said defendants and each of them, upon the ground that they and each of them are not necessary parties defendant to the above-entitled action; and this court having considered the motion to dismiss:

It is, on this 8th day of September, 1941, Ordered and Adjudged that the defendants, William Lifgren, W. W. Davenport, Jr., and Angelo R. Soriano, are not necessary parties defendant to the above-entitled action, and that the complaint herein be and the same is hereby dismissed as to said defendants and each of them.

Guy L. Fake, U. S. D. J.

Endorsed: "Filed Sept. 8-1941. At 10:15 o'clock A. M. Benjamin F. Havens, Clerk."

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil Action No. 1665

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment, Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, and Charles V. N. Davis, Assessor of the Township of Hillsborough, Defendants

DESIGNATION BY PLAINTIFF OF ADDITIONAL PORTIONS OF RECORD ON APPEAL

To Hon. William H. Tallyn, Clerk, United States District Court:

Samuel I. Kessler, Esq., Kessler & Kessler, 9 Clinton Street, Newark, N. J., Attorney for Defendants.

Messrs. Cox & Walburg, Raymond-Commerce Building, Newark, N. J., Attorney for Defendants.

GENTLEMEN:

Please take notice that the appellee, Doris Duke Cromwell, Individually and as Trustee of The Duke Endowment, hereby designates the following additional portions of the record, proceedings, and evidence to be included in the record on appeal in the above-entitled action:

1. Affidavit of Shelton Pitney in support of motion of plaintiff for summary judgment, verified on March 14, 1944 and attached to notice of motion of plaintiff for summary judgment dated March 14, 1944.

2. The following depositions taken in the cause and filed in this Court and expressly made parts of the above-mentioned affidavit by its references thereto:

November 8, 1941:

William Irving Frost, Justus H. Cooley, George H. Dorp, John P. Koehler, Amasa A. Storr, Margaret Killiger, John E. Betzold, Samuel P. Sutphen, Charles D. Erdley, Clarence Scheuerman, Washington K. Harris,

Margaret E. Demler, Samuel J. Conklin, George W. Mason, John Przybyla, Charles Opie, W. Walter French, William H. Tiger, Robert W. Gutleber, William H. Higgins;

November 13, 1941:

Harry McMurtry, Charles V. N. Davis;

December 5, 1941:

Walter C. Linbarger, Alonzo Y. Taylor, Christopher G. Horner, William Lifgren, Edward Lindstrom, J. Irving Stryker, Everest L. Belli, Angelo R. Soriano, William W. Davenport, Jr.;

December 8, 1941:

Christopher G. Horner;

December 11, 1941:

Christoper G. Horner, William Lifgren;

December 23, 1941:

William Lifgren, Edward Lindstrom;

January 5, 1942:

Edward Lindstrom, J. Irving Stryker, Everest L. Belli;

January 6, 1942:

Angelo R. Soriano, William W. Davenport, Jr.;

January 13, 14 and 26th, 1942:

J. Glenn Anderson, James E. Mullaney, Alfred L. Kirby;

January 20, 1942:

Doris Duke Cromwell.

Dated: November 21, 1944.

Respectfully, Pitney, Hardin & Ward, Attorneys for Plaintiff, Doris Duke Cromwell, Individually and as Trustee of The Duke Endowment. Shelton Pitney, of Counsel.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8780

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants,

vs.

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment, Appellee

ORDER ON MOTION OF APPELLANTS TO LIMIT RECORD ON APPEAL.

—Filed December 8, 1944

Present: Goodrich and McLaughlin, JJ.

The attorneys for appellants having on the 28th day of November, 1944, served on the attorneys for appellee a notice of motion to limit the record on appeal by eliminating therefrom the forty-five depositions designated in paragraph 2 of the "Designation by Plaintiff of Additional Portions of Record on Appeal" (filed in the District Court on November 21, 1944), and said motion to limit having been argued orally before this Court on December 4th, 1944 by Edward R. McGlynn, Esq., in favor of the motion, and by Shelton Pitney, Esq., in opposition thereto; and good reason appearing herefor;

It is, on this 8th day of December, 1944, ordered that the appellants' motion to limit the record on appeal by excluding therefrom the forty-five depositions designated in paragraph 2 of appellee's designation of additional portions of record on appeal filed November 21, 1944, be and the same is hereby granted, but upon condition that appellants include in the record on appeal (in addition to the portions of the record designated by appellants) the following:

1. Affidavit of Shelton Pitney in support of motion of plaintiff-appellee for summary judgment verified March 14, 1944;

2. Designation by plaintiff-appellee of additional portions of record on appeal filed in the District Court on November 21, 1944;

3. Motion on behalf of appellants to limit record on appeal served on plaintiff-appellee's attorneys on November 28, 1944; and

4. This order.

Goodrich, J.

We hereby approve of the form of the foregoing order.
Pitney, Hardin & Ward, Attorneys for Appellee.

EXHIBITS 7 and 8
ATTACHED TO COMPLAINT

FINAL TAX NOTICE—1940

TOWNSHIP OF HILLSBOROUGH

C. G. HORNER, *Collector*

INTEREST AT THE RATE OF 6% WILL BE ADDED ON DELINQUENT TAXES.

BRING THIS BILL WITH YOU OR SEND IT BY MAIL WHEN YOU PAY TAX.

NESHANIC STATION, N. J. R. D. No. 1

IF RECEIPT OR INFORMATION IS REQUIRED, ENCLOSE STAMP.

IF YOU CHANGE YOUR ADDRESS PLEASE NOTIFY COLLECTOR.

RATES AND APPORTIONMENT OF TAXES

STATE SCHOOL TAX	$ .288	$ 5,977.73
STATE SOLDIERS' BONUS	.021	681.68
COUNTY TAX	.613	19,130.13
COUNTY LIBRARY TAX	.030	933.30
TOWNSHIP SCHOOL TAX	1.338	41,482.50
TOWNSHIP TAX	.840	26 939.93
	$3.13	$96,775.30

1940 Tax 1/3 ~~3rd~~ Quarter $

DUE AUG. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Mrs. Doris Dube Cromwell
Block No. ____ Page No. 8
Lot No ____ Line No. 14

AMOUNT	936849 01
DOG TAX	
TOTAL TAX	936849 01
INTEREST	
TOTAL	

☐ Certified Check ☐ Check ☐ Money Order ☐ Cash

Cash Book Page ____

Collector

Date Paid ____

1940 Tax 31 4th Quarter $

DUE NOV. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Mrs. Doris Dube Cromwell
Block No. ____ Page No. 8
Lot No ____ Line No. 14

AMOUNT	936849 01
DOG TAX	
TOTAL TAX	936849 01
INTEREST	
TOTAL	

☐ Certified Check ☐ Check ☐ Money Order ☐ Cash

Cash Book Page ____

Collector

Date Paid ____

3rd QUARTER OF TAX DUE AUG. 1st, 1940. DELINQUENT THEREAFTER

Received Payment 3rd Quarter 3 (102) ____ 19____

Collector of Taxes

$ ____

4th QUARTER OF TAX DUE NOV. 1st, 1940. DELINQUENT THEREAFTER

Received Payment 4th Quarter $ (31) ____ 19____

Collector of Taxes

$ ____

VALUATIONS

Block No.	Lot No.	DUPLICATE Page	DUPLICATE Line	DESCRIPTION and LOCATION	Land	Buildings	Personal	Total Value of Real & Personal	Exemptions	Total Net Valuations
		8	14				600544 24			600544 24

TAXES

Total Amount Tax—1940	3rd Quarterly Installment	4th Quarterly Installment
1873698.02		

Notice of Account Year ____

Mrs Doris Dube Cromwell
Somerville, New Jersey

CREDIT			
TAX DUE IN 3rd & 4th QUARTERS	1873698 02		
DOG TAX			
TOTAL TAX	1873698 02		
INTEREST			
TOTAL			

READ CAREFULLY

Chapter 266, P. L. 1933 provides for the quarterly payment of taxes as follows: Quarterly installments on the following dates: Feb. 1, 1940 - May 1, 1940 - Aug. 1, 1940 - Nov. 1, 1940.

SALE OF LAND FOR UNPAID TAXES— When any municipal lien on real property remains unpaid on July 1 in the year following the date when it became in arrears (December 1st, the collector shall enforce the lien by sale of the property. (Laws of 1918, Chapter 237 sec. 16)

UNPAID TAXES ON PERSONAL PROPERTY—Where any personal taxes remain in arrears after December 1st it shall be the duty of the Collector to enforce the same by distress and sale of the goods or chattels or by arrest. (Excerpt from Laws of 1918, Chapter 236, sec. 606.)

LIEN—Unpaid taxes on land with interest, etc., becomes a lien on and after December 1st. (Chapter 237, Laws of 1918).

APPEALS—All appeals must be filed with the Somerset County Board of Taxation, Court House, Somerville, N. J., on or before Aug. 15, 1940. Necessary blanks can be secured from the local Assessor or by writing the Secretary of the Board at Somerville. Two appeal blanks must be filled out, one copy served on the Clerk of the municipality where the assessment has been levied and the other filed with the Secretary of the Board. No appeal can be filed by law after Aug. 15, 1940, and the Board cannot accept any appeal for filing after that date. This provision of law must be strictly enforced and cannot be waived.

EXHIBITS 9 and 10
ATTACHED TO COMPLAINT

FINAL TAX NOTICE — 1941

TOWNSHIP OF HILLSBOROUGH

C. G. HORNER, *Collector*

INTEREST AT THE RATE OF 6% WILL BE ADDED ON DELINQUENT TAXES.

BRING THIS BILL WITH YOU OR SEND IT BY MAIL WHEN YOU PAY TAX.

MILLSTONE STATION, N. J. R. D. No. 1

IF RECEIPT OR INFORMATION IS REQUIRED, ENCLOSE STAMP.

IF YOU CHANGE YOUR ADDRESS, PLEASE NOTIFY COLLECTOR.

RATES AND APPORTIONMENT OF TAXES

STATE SCHOOL TAX	$ .358	$ 8,636.04
COUNTY TAX	.883	21,277.03
COUNTY LIBRARY TAX	.030	697.10
TOWNSHIP SCHOOL TAX	1.610	43,295.00
TOWNSHIP TAX	.709	21,961.28
	3.10	$90,736.44

3rd QUARTER OF TAX DUE AUG. 1st, 1941. DELINQUENT THEREAFTER

Received Payment 3rd Quarter $ 1/2 19___

Collector of Taxes

$ _____

4th QUARTER OF TAX DUE NOV. 1st, 1941. DELINQUENT THEREAFTER

Received Payment 4th Quarter $ 19___

Collector of Taxes

$ _____

Lot No.	DUPLICATE Page	DUPLICATE Line	DESCRIPTION and LOCATION	VALUATIONS Land	Buildings	Personal	Total Value of Real & Personal	Exemptions	Total Net Valuations	TAXES Total Amount Tax—1941	3rd Quarterly Installment	4th Quarterly Installment
	10	14				690,540			690,540	1861687.14		

Name of Assessee Year _____

Mrs Dorris Dubs Cromwell
Somerville New Jersey

CREDIT			
TAX DUE IN 3rd & 4th QUARTERS	1861687	14	
DOG TAX			
TOTAL TAX	1861687	14	
INTEREST			
TOTAL			

1941 Tax 1/2 — 3rd Quarter $

DUE AUG. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Mrs. Dorris Dubs Cromwell
Block No. _____ Page No. 10
Lot No. _____ Line No. 14

AMOUNT	930843	57
DOG TAX		
TOTAL TAX	930843	57
INTEREST		
TOTAL		

☐ Certified Check
☐ Check
☐ Money Order
☐ Cash

Cash Book Page ____

Collector

Date Paid _____

1941 Tax 2nd 4th Quarter $

DUE NOV. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Mrs. Dorris Dubs Cromwell
Block No. _____ Page No. 14
Lot No. _____ Line No. 14

AMOUNT	930843	57
DOG TAX		
TOTAL TAX	930843	57
INTEREST		
TOTAL		

☐ Certified Check
☐ Check
☐ Money Order
☐ Cash

Cash Book Page ____

Collector

Date Paid _____

READ CAREFULLY

Chapter 366, P. L. 1933 provides for the quarterly payment of taxes as follows: Quarterly installments on the following dates: Feb. 1941 - May 1, 1941 - Aug. 1, 1941 - Nov. 1, 1941.

SALE OF LAND FOR UNPAID TAXES — When any municipal lien on real property remains unpaid on July 1 in the year following the date when it became in arrears (December 1st, the collector shall enforce the lien by sale of the property. (Laws of 1918, Chapter 237 sec. 16)

UNPAID TAXES ON PERSONAL PROPERTY — Where any personal * taxes remain in arrears after December 1st it shall be the duty of the Collector to enforce the same by distress and sale of the goods or chattels or by arrest. (Excerpt from Laws of 1918, Chapter 236, sec. 686.)

LIEN — Unpaid taxes on land with interest, etc. becomes a lien on and after December 1st. (Chapter 237, Laws of 1918).

APPEALS — All appeals must be filed with the Somerset County Board of Taxation, Court House, Somerville, N. J., on or before Aug. 15, 1941. Necessary blanks can be secured from the local Assessor or by writing the Secretary of the Board at Somerville. Two appeal blanks must be filled out, one copy served on the Clerk of the municipality where the assessment has been levied and the other filed with the Secreary of the Board. No Appeal can be filed by law after Aug. 15, 1941, and the Board cannot accept any appeal for filing after that date. This provision of law must be strictly enforced and cannot be waived.

EXHIBITS 11 and 12
ATTACHED TO COMPLAINT

FINAL TAX NOTICE—1940

TOWNSHIP OF HILLSBOROUGH

C. G. HORNER, *Collector*

NESHANIC STATION, N. J. R. D. No. 1

INTEREST AT THE RATE OF 6% WILL BE ADDED ON DELINQUENT TAXES.

BRING THIS BILL WITH YOU OR SEND IT BY MAIL WHEN YOU PAY TAX.

IF RECEIPT OR INFORMATION IS REQUIRED, ENCLOSE STAMP.

IF YOU CHANGE YOUR ADDRESS PLEASE NOTIFY COLLECTOR.

RATES AND APPORTIONMENT OF TAXES

STATE SCHOOL TAX	$ .338	$ 8,977.73
STATE SOLDIERS' BONUS	.021	681.68
COUNTY TAX	.613	19,190.12
COUNTY LIBRARY TAX	.020	638.30
TOWNSHIP SCHOOL TAX	1.338	41,482.80
TOWNSHIP TAX	.840	25 999.92
	$3.12	$96,775.20

3rd QUARTER OF TAX DUE AUG. 1st, 1940. DELINQUENT THEREAFTER

Received Payment 3rd Quarter $ 152 ..... 19....

Collector of Taxes

$.....

4th QUARTER OF TAX DUE NOV. 1st, 1940. DELINQUENT THEREAFTER

Received Payment 4th Quarter $ 3e ..... 19....

Collector of Taxes

$.....

VALUATIONS

Block No.	Lot No.	DUPLICATE Page	DUPLICATE Line	DESCRIPTION and LOCATION	Land	Buildings	Personal	Total Value of Real & Personal	Exemptions	Total Net Valuations
		8	12							

Notice of Arrears Year .....

Mrs Doris Duke Cromwell
Trustee of The Duke Endowment
Somerville, New Jersey

TAXES

	Total Amount Tax—1940	3rd Quarterly Installment	4th Quarterly Installment
	505084363		
CREDIT	—		
TAX DUE IN 3rd & 4th QUARTERS	505084363		
DOG TAX	—		
TOTAL TAX	505084363		
INTEREST			
TOTAL			

1940 Tax 3rd Quarter

DUE AUG. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Trustee of Du

Name Doris Duke Cromwell Duke Endowment

Block No. ..... Page No. 8

Lot No. ..... Line No. 12

AMOUNT	252542182	☐ Certified Check
DOG TAX	—	☐ Check
TOTAL TAX	252542182	☐ Money Order
INTEREST		☐ Cash
TOTAL		Cash Book Page.....

Collector

Date Paid .....

1940 Tax 4th Quarter

DUE NOV. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Trustee of Du

Name Doris Duke Cromwell Duke Endowment

Block No. ..... Page No. 8

Lot No. ..... Line No. 12

AMOUNT	252542181	☐ Certified Check
DOG TAX	—	☐ Check
TOTAL TAX	252542181	☐ Money Order
INTEREST		☐ Cash
TOTAL		Cash Book Page.....

Collector

Date Paid .....

READ CAREFULLY

Chapter 266, P. L. 1938 provides for the quarterly payment of taxes as follows: Quarterly installments on the following dates: Feb. 1, 1940 - May 1, 1940 - Aug. 1, 1940 - Nov. 1, 1940.

SALE OF LAND FOR UNPAID TAXES— When any municipal lien on real property remains unpaid on July 1 in the year following the date when it became in arrears (December 1st) the collector shall enforce the lien by sale of the property. (Laws of 1918, Chapter 237 sec. 16)

UNPAID TAXES ON PERSONAL PROPERTY—Where any personal taxes remain in arrears after December 1st it shall be the duty of the Collector to enforce the same by distress and sale of the goods or chattels or by arrest. (Excerpt from Laws of 1918, Chapter 236, sec. 696.)

LIEN—Unpaid taxes on land with interest, etc., becomes a lien on and after December 1st. (Chapter 237, Laws of 1918).

APPEALS—All appeals must be filed with the Somerset County Board of Taxation, Court House, Somerville, N. J., on or before Aug. 15, 1940. Necessary blanks can be secured from the local Assessor or by writing the Secretary of the Board at Somerville. Two appeal blanks must be filled out, one copy served on the Clerk of the municipality where the assessment has been levied and the other filed with the Secretary of the Board. No appeal can be filed by law after Aug. 15, 1940, and the Board cannot accept any appeal for filing after that date. This provision of law must be strictly enforced and cannot be waived.

EXHIBITS 13 and 14
ATTACHED TO COMPLAINT

FINAL TAX NOTICE — 1941

TOWNSHIP OF HILLSBOROUGH

C. G. HORNER, *Collector*

NESHANIC STATION, N. J. R. D. No. 1

INTEREST AT THE RATE OF 6% WILL BE ADDED ON DELINQUENT TAXES.

BRING THIS BILL WITH YOU OR SEND IT BY MAIL WHEN YOU PAY TAX.

IF RECEIPT OR INFORMATION IS REQUIRED, ENCLOSE STAMP.

IF YOU CHANGE YOUR ADDRESS, PLEASE NOTIFY COLLECTOR.

RATES AND APPORTIONMENT OF TAXES

STATE SCHOOL TAX	$ .321	$ 8,036.04
COUNTY TAX	.083	21,377.03
COUNTY LIBRARY TAX	.030	837.10
TOWNSHIP SCHOOL TAX	1.410	43,235.00
TOWNSHIP TAX	.700	21,861.30
	2.10	$94,736.44

4 QUARTER OF TAX DUE AUG. 1st, 1941. DELINQUENT THEREAFTER

Received Payment 2nd Quarter $ 102 ..... 19....

..... Collector of Taxes

$.....

4th QUARTER OF TAX DUE NOV. 1st, 1941. DELINQUENT THEREAFTER

Received Payment 4th Quarter $ 37 ..... 19....

..... Collector of Taxes

$.....

VALUATIONS										TAXES		
Lot No.	DUPLICATE Page	DUPLICATE Line	DESCRIPTION and LOCATION	Land	Buildings	Personal	Total Value of Real & Personal	Exemptions	Total Net Valuations	Total Amount Tax—1941	3rd Quarterly Installment	4th Quarterly Installment
	10	12				6118 Corr			5 1875 Corr	5018/66 4/3		

Notice of Amount Due .....

Mrs. Doris Duke Cromwell
Trustee of the Duke Endowment
Somerville, New Jersey

CREDIT	-		
TAX DUE IN 3rd & 4th QUARTERS	5018/66 4/3		
DOG TAX			
TOTAL TAX	5018/66 4/3		
INTEREST			
TOTAL			

1941 Tax 1st 2nd 3rd Quarters

DUE AUG. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Doris Duke Cromwell, Duke Endowment Trustee of the
Block No. ..... Page No. .....
Lot No. ..... Line No. .....

AMOUNT	2509233	22
DOG TAX		-
TOTAL TAX	2509233	22
INTEREST		
TOTAL		

☐ Certified Check
☐ Check
☐ Money Order
☐ Cash

Cash Book Page.....

.....
Collector

Date Paid .....

1941 Tax 3rd 4th Quarters

DUE NOV. 1st. DELINQUENT THEREAFTER

If paid by check and no receipt is required detach this stub and enclose with your remittance. Your cancelled check will be your receipt.

Name Doris Duke Cromwell, Duke Endowment Trustee of the
Block No. ..... Page No. .....
Lot No. ..... Line No. .....

AMOUNT	2509233	21
DOG TAX		-
TOTAL TAX	2509233	21
INTEREST		
TOTAL		

☐ Certified Check
☐ Check
☐ Money Order
☐ Cash

Cash Book Page.....

.....
Collector

Date Paid .....

READ CAREFULLY

Chapter 116, P. L. 1933 provides for the quarterly payment of taxes as follows: Quarterly installments on the following dates: Feb 15th - May 1, 1941

SALE OF LAND FOR UNPAID TAXES — When any municipal lien on real property remains unpaid on July 1 in the year following the date when it became in arrears (December 1st,) the collector shall advertise the property for sale. (Laws of 1918, Chapter 247, sec. 16)

UNPAID TAXES ON PERSONAL PROPERTY — Where any personal taxes remain in arrears after December 1st it shall be the duty of the Collector to enforce the same by distress and sale of the goods or chattels or by arrest. (Excerpt from Laws of 1918, Chapter 236, sec. 60.)

LIEN — Unpaid taxes on land with interest, etc., becomes a lien on the land as of December 1st. (Chapter 247, Laws of 1918).

APPEALS — All appeals must be filed with the Somerset County Board of Taxation, Court House, Somerville, N. J., on or before Aug. 15, 1941. Necessary blanks can be secured from the local Assessor or by writing the Secretary of the Board at Somerville. Two appeal blanks must be filled out, one copy served on the Clerk of the municipality where the assessment has been levied and the other filed with the Secretary of the Board. No Appeal can be filed by law after Aug. 15, 1941, and the Board cannot accept any appeal for filing after that date. This provision of law must be strictly enforced and cannot be waived.

[fol. 137] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8780

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants,

vs.

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, Appellee

MOTION ON BEHALF OF APPELLANTS TO LIMIT RECORD ON APPEAL

To Messrs. Pitney, Hardin & Ward, Attorneys for Appellee, 744 Broad Street, Newark 2, N. J.

SIRS:

Please Take Notice that on Monday, December 4, 1944, at 10:30 o'clock in the forenoon, Eastern War Time, or as soon thereafter as counsel can be heard, we shall move the above entitled Court at the Court Rooms, United States Court House, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, for an order limiting the record on appeal in the above entitled matter, and particularly eliminating from the said record of appeal forty-five depositions taken by way of discovery and as more particularly set forth in paragraph 2 of the designation by the appellee of additional portions of the record on appeal, a copy of which is attached hereto, made a part hereof and marked Schedule A, on one or more of the following grounds:

1. That the said depositions are irrelevant and immaterial to the issues raised on this appeal. See appellant's statement of points, copy of which is attached hereto and marked Schedule B.

[fol. 138] 2. That all of the depositions referred to, but that of the plaintiff, were taken on behalf of the appellee on discovery proceedings pursuant to the Federal Rules of Civil Procedure. That there has not been any trial on the merits in the court below and that none of said depositions were offered in evidence and that all of the persons whose depositions were taken on behalf of the plaintiff were and

are residents of the State of New Jersey and are within the jurisdiction of the United States District Court for the District of New Jersey.

3. That the summary judgment of the court below was entered on a question of law based on the pleadings and affidavit made by counsel for the plaintiff. See opinion and judgment of court below attached hereto and marked Schedules C and D.

4. That all of the said depositions taken by the plaintiff were for the purpose of discovery before trial on the question of alleged intentional discrimination of the assessment of intangible personal property taxes against the plaintiff and that the question of the alleged intentional discrimination was not considered or determined by the court below.

Respectfully, Clarkson A. Cranmer, Kessler & Kessler, Cox and Walburg, Attorneys for Appellants, by Samuel I. Kessler, of Counsel.

[fol. 139] SCHEDULE "A"

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil Action No. 1665

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and Charles V. N. Davis, Assessor of the Township of Hillsborough, Defendants

DESIGNATION BY PLAINTIFF OF ADDITIONAL PORTIONS OF RECORD ON APPEAL

To: Hon. William H. Tallyn, Clerk, United States District Court; Samuel A. Kessler, Esq., Kessler & Kessler, 9 Clinton Street, Newark, N. J., Attorney for Defendants; Messrs. Cox & Walburg, Raymond-Commerce Building, Newark, N. J., Attorneys for Defendants

GENTLEMEN:

Please Take Notice that the appellee, Doris Duke Cromwell, Individually and as Trustee of The Duke Endowment,

hereby designates the following additional portions of the record, proceedings, and evidence to be included in the record on appeal in the above-entitled action:

1. Affidavit of Shelton Pitney in support of motion of plaintiff for summary judgment, verified on March 14, 1944 and attached to notice of motion of plaintiff for summary judgment dated March 14, 1944.

[fol. 140] 2. The following depositions taken in the cause and filed in this Court and expressly made parts of the above-mentioned affidavit by its references thereto:

November 5, 1941:

William Irving Frost, Justus H. Cooley, George H. Dorn, John P. Koehler, Amasa A. Storr, Margaret Killiger, John E. Betzold, Samuel P. Sutphen, Charles D. Erdley, Clarence Scheuerman, Washington K. Harris, Margaret E. Demler, Samuel J. Conklin, George W. Mason, John Przybyla, Charles Opie, W. Walter French, William H. Tiger, Robert W. Gutleber, William H. Higgins;

November 13, 1941:

Harry McMurtry, Charles V. N. Davis;

December 5, 1941:

Walter C. Linbarger, Alonzo Y. Taylor, Christopher G. Horner, William Lifgren, Edward Lindstrom, J. Irving Stryker, Everest L. Belli, Angelo R. Soriano, William W. Davenport, Jr.;

December 8, 1941:

Christopher G. Horner;

December 11, 1941:

Christopher G. Horner, William Lifgren;

December 23, 1941:

William Lifgren, Edward Lindstrom;

January 5, 1942:

Edward Lindstrom, J. Irving Stryker, Everest L. Belli;

January 6, 1942:

Angelo R. Soriano, William W. Davenport, Jr.;

January 13, 14 and 26th, 1942:

J. Glenn Anderson, James E. Mullaney, Alfred L. Kirby;

January 20, 1942:
Doris Duke Cromwell.

Dated: November 21, 1944.

Respectfully, Pitney, Hardin & Ward, Attorneys for Plaintiff, Doris Duke Cromwell, Individually and as Trustee of The Duke Endowment.

Shelton Pitney, of Counsel.

[fol. 141] SCHEDULE "B"

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil Action No. 1665

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, Plaintiff,

vs.

TOWNSKIP OF HILLSBOROUGH, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and Charles V. N. Davis, Assessor of the Township of Hillsborough, Defendants

STATEMENT OF POINTS ON APPEAL TO UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

To Messrs. Pitney, Hardin and Ward, Attorneys for Plaintiff, 744 Broad Street, Newark 2, New Jersey.

SIRS:

Please Take Notice that the appellants, Township of Hillsborough and Christopher G. Horner, state that the points upon which they intend to rely on the appeal of this action are as follows:

1. The United States District Court for the District of New Jersey erred in entering summary judgment in favor of the plaintiff and against the appellants.

2. The United States District Court for the District of New Jersey erred in refusing to dismiss plaintiff's complaint.

3. The United States District Court for the District of New Jersey did not have jurisdiction of the subject matter set forth in the plaintiff's complaint under the declaratory judgment act.

4. The United States District Court for the District of New Jersey erred in assuming jurisdiction of the plain-
[fol. 142] tiff's complaint and the alleged cause of action set forth therein.

5. The plaintiff has a plain, speedy and adequate remedy in the administrative bodies and in the Courts of the State of New Jersey.

6. The plaintiff failed to avail herself prior to the filing of her complaint of the plain, speedy and adequate remedy provided by the administrative bodies and the Courts of the State of New Jersey.

7. The United States District Court for the District of New Jersey erred in retaining jurisdiction of the complaint after a dismissal of the complaint as to the defendants, William Lifgrin, W. W. Davenport and Angelo R. Soriano, on the ground that said defendants are necessary and indispensable parties to the action.

Clarkson A. Cranmer, Cox and Walburg, Kessler and Kessler, Attorneys for Defendants, Township of Hillsborough, and Christopher G. Horner, by Samuel I. Kessler.

[fol. 143] SCHEDULE "C"

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil No. 1665

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey; Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and Charles V. N. Davis, Assessor of the Township of Hillsborough, Defendants

OPINION

Appearances:

Messrs. Pitney, Hardin & Ward, Attorneys for Plaintiff, by Shelton Pitney, Esq., of Counsel.

Clarkson A. Cranmer, Esq., Messrs. Kessler & Kessler, by Samuel I. Kessler, Esq., Messrs. Cox & Walburg, by Harry E. Walburg, Esq., Attorneys for Defendants.

FAKE, District Judge:

The issues here arise on three motions which will be considered in numerical order.

1. This is a motion for summary judgment declaring four certain resolutions, referred to in Paragraphs 18 and 19 of the Complaint, adopted by the Somerset County Board of Taxation on June 26, 1941, and the assessments of properties made and tax bills issued thereon by the Township of Hillsborough, to be null and void for the reasons alleged in paragraphs 17 and 21 through 32 of the Complaint herein as by reference thereto will more fully appear.

[fol. 144] In this connection the uncontroverted affidavit of Shelton Pitney filed herein discloses that the said resolutions were adopted and the assessments were made without notice to the plaintiff either in her individual or representative capacity, contrary to the form of the Statute, Sec. 54:3-20 of the Revised Statutes of New Jersey, as construed in Duke Power Co. v. State Board of Tax Appeals, 129 N. J. L. 449, 30 Atl. 2nd, 416, affirmed 131 N. J.

L. 275, 36 Atl. 2nd. 201. The said resolutions and subsequent proceedings thereon by the Township of Hillsborough are therefore null and void and the motion for summary judgment in favor of plaintiff, individually and as trustee against the Township of Hillsborough and Christopher G. Horner, Collector, is granted.

2. This is a motion directed by defendants to a dismissal of the complaint on the ground that (a) the court has no jurisdiction, (b) the court in its discretion should refuse to entertain jurisdiction, (c) that plaintiff has an adequate remedy in the State administrative bodies and in the State courts.

No serious argument has been directed to sustain lack of jurisdiction. As to the discretionary power of the court the case of Great Lakes Co. v. Huffman, 319 U. S. 293, is cited as authority. The allegations of discrimination in the Complaint herein differentiate the instant case from that above cited and this court has heretofore passed on it in an opinion filed on July 30, 1942. I there considered carefully the subject of discrimination as it is found in the case law of the State finding that the existing State law is in conflict with the Federal constitution. The reasoning there applies here as well. The point is therefore not well taken here.

[fol. 145] As to the adequacy of the remedies before the administrative bodies of the State, it is my view that even though by virtue of the ruling in Duke Power Co. v. State Board of Tax Appeals, supra, it may be said that there is an adequate State administrative remedy, there is no point in sending the issue there when this court can and does retain jurisdiction on the ground of discrimination. See Chicago G. W. Ry. v. Kendall, 266 U. S. 94. The motion is denied.

3. This is a motion for judgment in favor of the defendant Charles V. N. Davis, Assessor, on the ground that there is no genuine issue of any material fact as to him. The lack of an issue against him is conceded. A judgment will therefore be entered in his favor against the plaintiff.

The prevailing parties are entitled to their respective costs to be taxed.

[fol. 146] SCHEDULE "D"

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil Action No. 1665

DORIS DUKE CROMWELL, Individually and as Trustee of The Duke Endowment, Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, New Jersey, CHRISTOPHER G. HORNER, Collector of Taxes of the Township of Hillsborough, and CHARLES V. N. DAVIS, Assessor of the Township of Hillsborough, Defendants.

JUDGMENT

The plaintiff in the above-entitled cause having duly filed herein a motion for summary judgment, and the defendants having filed a cross motion to dismiss the complaint herein and the plaintiff's suit on the grounds (1) that the alleged cause of action set forth in the complaint is not within the jurisdiction of the United States District Court, (2) that the court in appropriate exercise of its discretion should not entertain jurisdiction and (3) that the plaintiff has a plain, adequate and complete remedy in the administrative bodies and in the courts of the State of New Jersey; and the defendant, Charles V. N. Davis, having separately applied for a summary judgment herein on the ground that there is no genuine issue of any material fact as against him and that the defendant is entitled to judgment as a matter of law;

And said motions having been argued before the court by Shelton Pitney, Esq., of Pitney, Hardin & Ward, attorneys for the plaintiff, and by Harry E. Walburg, Esq., of Cox & Walburg, and Samuel I. Kessler, of Kessler & Kessler, of counsel with the defendants, and the court [fol. 147] having considered the arguments of counsel aforesaid and their respective briefs and the entire record in this cause, including the affidavit annexed to the plaintiff's notice of motion for summary judgment (and the depositions therein referred to) and the affidavit annexed to the motion of the defendant, Charles V. N. Davis:

It is, on this 7th day of August, 1944, Ordered, Adjudged and Decreed:

1. That the complaint herein states no genuine issue as against the defendant Charles V. N. Davis and that for that reason judgment be, and it is hereby, entered in his favor against the plaintiff and the complaint be, and the same is hereby dismissed as to said defendant Charles V. N. Davis.

2. That the motion of the defendants, Township of Hillsborough, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of said Township of Hillsborough, to dismiss the complaint and the plaintiff's suit be and the same is hereby denied.

3. That the plaintiff's motion for summary judgment against the defendants, Township of Hillsborough, Somerset County, New Jersey, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, be and the same is hereby granted, and that the four certain resolutions adopted by the Somerset County Board of Taxation at its *ex parte* meeting held on June 26, 1941, as well as all entries and assessments of properties made and tax bills presented in and for said Township of Hillsborough by reason of said resolutions are wholly null and void for the reasons that said resolutions were adopted after April first of each of the tax years 1940 and 1941 upon and in response to the written complaints (in said resolutions [fol. 148] called "applications") of the defendant, Christopher G. Horner, the Collector and a resident and taxpayer of the defendant, Township of Hillsborough, so demanding and presented to said Board for that purpose and by said resolutions said Board undertook at an *ex parte* meeting of said Board to assess, and to enter or cause to be entered on the tax lists and duplicates of said Township for assessment in and by said Township for each of said tax years, the intangible personal properties embraced in said resolutions, entries and assessments on the ground that said properties had been wholly omitted in the assessment for said Township for each of said tax years, without the plaintiff, either personally or as a trustee of the Duke Endowment, being given any notice of said complaints or meeting or being present or represented or accorded any hearing at said meeting and in particular without plaintiff, in either of said capacities, having been given the "five days' notice in writing to the owner by the party complaining" or accorded by said Board the "due

examination" or the "hearing" of a judicial character made indispensable prerequisites to the adoption of such resolutions by the mandatory provision of Section 54:3-20 of the Revised Statutes of New Jersey that:

> "On the written complaint of the collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the county board, on five days' notice in writing to the owner by the party complaining, and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing a transcript whereof shall be furnished by the board to the collector, who shall amend his duplicate accordingly."

4. That judgment be entered for her costs to be taxed in favor of the plaintiff and against the defendants, Hillsborough Township, Somerset County, New Jersey, and [fol. 149] Christopher G. Horner, Collector of Taxes of the Township of Hillsborough; and that judgment be entered for his costs to be taxed in favor of the defendant, Charles V. N. Davis, against the plaintiff.

Guy L. Fake, U. S. D. J.

Endorsements: Motion of Appellants to Limit Record on Appeal Received & Filed Nov. 29, 1944. Wm. P. Rowland, Clerk.

(The Order of December 8, 1944 granting this motion appears in the Appendix to Appellee's Brief.)

[fol. 150] [Endorsed:] 8780. United States Circuit Court of Appeals for the Third Circuit, Township of Hillsborough, etc., et al., Appellants, vs. Doris Duke Cromwell, individually and as Trustee of the Duke Endowment, Appellee, No. 8780. Motion on Behalf of Appellants to Limit Record on Appeal, Clarkson A. Cranmer, Cox and Walburg, Kessler & Kessler, Attorneys for Appellants, 9 Clinton Street, Newark 2, N. J. Received & Filed Nov. 29, 1944. William P. Rowland, Clerk.

[fol. 151] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8780

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment, Plaintiff-Appellee,

vs.

TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY, NEW JERSEY, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants

And afterwards, to wit, the 4th day of December, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for hearing on Appellants' Motion to Limit Record on Appeal before the Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

[fol. 152] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8780

DORIS DUKE CROMWELL, Individually and as Trustee, Plaintiff-Appellee,

vs.

TOWNSHIP OF HILLSBOROUGH, etc., et al., Defendants-Appellants

Appeal from the District Court of the United States for the District of New Jersey

And now, to-wit: this 14th day of February, A. D. 1945, it is ordered that Hon. John J. Parker, U. S. Circuit Judge, for the Fourth Circuit, and Hon. William H. Kirkpatrick, District Judge, for the Eastern District of Pennsylvania, be, and they are hereby assigned to sit in above case in order to make a full court.

Goodrich, Circuit Judge.

Endorsements: Order Assigning Hon. John J. Parker and Hon. William H. Kirkpatrick for Argument. Received and Filed Feb. 14, 1945. William P. Rowland, Clerk.

[fol. 153] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8780

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment, Plaintiff-Appellee,

vs.

TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY, NEW JERSEY, and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants

And afterwards, to wit, the 14th day of February, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John J. Parker and Honorable Herbert F. Goodrich, Circuit Judges, and Honorable William H. Kirkpatrick, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 9th day of May, 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 154] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8780

DORIS DUKE CROMWELL, Individually and as Trustee of the Duke Endowment,

v.

TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY, N. J., and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants

Appeal from Judgment of the United States District Court for the District of New Jersey

Before Parker and Goodrich, Circuit Judges, and Kirkpatrick, District Judge

OPINION OF THE COURT—Filed May 9, 1945

By GOODRICH, Circuit Judge:

The plaintiff in this case brought an action for declaratory judgment under the statute (28 U. S. C. A. § 400) seeking

a declaration that four personal property tax assessments levied by the Somerset County Board of Taxation against the plaintiff individually and as trustee for the Duke Endowment are null and void. The litigation terminated in the District Court with the entry of a summary judgment in the plaintiff's favor and the defendants appeal.

The first ground for complaint on the part of the defendants is that the District Court was without jurisdiction to entertain the suit under the Declaratory Judgment Act. We do not doubt that federal courts are not to entertain suits under this statute for the sole purpose of obtaining [fol. 155] a determination of the validity of a state tax assessment where federal rights are fully protected by proceedings in the state courts. Great Lakes Dredge & Dock Co. et al. v. Huffman, 319 U. S. 293 (1943) is not only authority for the general proposition but gives appropriate caution to federal courts on the question of even indirect interference with the regular tax procedure of the states. But that decision did not hold that declaratory judgment procedure was unavailable where a federal right was threatened and where there was not an adequate remedy available within the state machinery.

The federal right involved is set out in Sioux City Bridge Co. v. Dakota County, 260 U. S. 441 (1923). It was there held that intentional and arbitrary assessment of one owner for taxation at its true value, in accordance with the state constitution and laws, while other like property is systematically assessed much lower, is a violation of the equal protection of the laws. This proposition has been reiterated in Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pennsylvania, 284 U. S. 23 (1931) and in Iowa-Des Moines National Bank v. Bennett, Chairman et al., 284 U. S. 239 (1931).

New Jersey makes provision for taxpayers who consider their legal rights to have been infringed by acts of taxing authorities. There is an appeal provided to the State Board of Tax Appeals, Borough of Oradell v. State Board of Tax Appeals, 125 N. J. L. 37, 13 A. (2d) 479 (1940). Procedure on certiorari may be invoked to review the Board's decision. Town of Kearney v. State Board of Taxes and Assessment et al., 103 N. J. L. 26, 135 Atl. 61 (1926). There is appeal to the Court of Errors and Appeals. General Motors Corporation v. State Board of Tax Appeals et al., 125 N. J. L. 574, 16 A. (2d) 632 (1932).

But when one turns to the New Jersey decisions upon the point covered in the Supreme Court cases above cited to compare the local rule of law, there is found this authoritative statement by Gummere, C. J. in Royal Mfg. Co. v. [fol. 156] Board of Equalization of Taxes of New Jersey, 78 N. J. L. 337, 74 Atl. 525, 526 (1909): "The action of the taxing authorities in assessing other property in the same taxing district at less than its true value afforded no reason for reducing the assessment upon the prosecutor's property to less than its true value; for the Constitution requires that property shall be assessed for taxation according to its true value, and a reduction below true value would be a violation of that constitutional provision." This rule is reiterated in other decisions. See State (Maxson et al., Prosecutors) v. Segoine, Collector, 53 N. J. L. 339, 21 Atl. 852 (1891), aff'd 54 N. J. L. 212, 25 Atl. 963 (1891); State, Wharton, Prosecutor v. A. E. Koster, Collector of Washington Township, Burlington County, 38 N. J. L. 308 (1876). In the latest case on the subject the court said: "It is the established law of this state that the fact that other property in a taxing district is assessed for valuation at less than its true value affords no ground for reducing the assessment placed upon the property of a complaining taxpayer below the true value thereof. * * * The petitioners concede this to be true, but contend that the rule to the contrary, as announced in the cases of which Sioux City Bridge Co. v. Dakota County * * * is typical, should be followed * * *. A substantially like contention was made and denied by this court * * *. The law, on this point, is also settled and controlling." Lehigh Valley R. Co. of New Jersey v. State Board of Taxes and Appeals et al., 12 N. J. Misc. 673, 174 Atl. 359 (1934).

The appellants contend that Central R. Co. of New Jersey v. State Tax Department et al., 112 N. J. L. 5, 169 Atl. 489 (1933), cert. den. 293 U. S. 568 (1934) has established the state law to the contrary and that the subsequent decision just quoted from must be disregarded as evidence of state law. We disagree. It is true that the court in the Central Railroad decision referred to the Sioux City Bridge case in that opinion citing it for the proposition that undervaluation must be established as an adopted practice. What [fol. 157] the court decided, however, was that the testimony offered in the particular litigation could not justify a finding of organized effort on the part of local assessors to assess

local property at less than true value. The same judge who wrote the opinion in this case also wrote the opinion in the Lehigh Valley case cited above. It is quite evident from the language used by him and his failure even to cite his earlier opinion that he did not think that the decision in the Central R. Co. case had overruled earlier decisions and changed the state law. We conclude that the view of the New Jersey courts upon the point is still that set out in the quotation from Mr. Chief Justice Gummere and the conflict between state law and federal right is still that which appears in the discussion of this court in Central R. Co. of New Jersey v. Martin, State Tax Com'r. et al., 65 F. (2d) 613 (C. C. A. 3, 1933).

The plaintiff's complaint alleged facts which showed a violation of the right set out by the Supreme Court in the Sioux City Bridge case. Appeal to the state courts, as shown in the state decisions cited, shows that such appeal would be unavailing to protect a constitutional right. Under those circumstances, the state procedure is not speedy, efficient or adequate. Union Pacific Railroad Company v. Board of County Commissioners of the County of Weld, State of Colorado, et al., 247 U. S. 282 (1918); Dawson, Attorney General of the State of Kentucky et al., v. Kentucky Distilleries & Warehouse Company, 255 U. S. 288 (1921). We conclude that the jurisdiction of the federal court in a declaratory judgment suit was properly invoked. See Spector Motor Service v. McLaughlin, Tax Commissioner, — U. S. —, 65 Sup. Ct. Reporter 152 (1944).

The point upon which the plaintiff won, in the District Court, was not the constitutional question, but that of the invalidity of the assessment under New Jersey law. This is shown in the plaintiff's motion for judgment and the opinion of the court in granting it. Since the foundation for federal jurisdiction existed, however, that jurisdiction [fol. 158] continued for the settlement of the controversy "even though [the court] * * * decided the Federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or state questions only." Siler et al. v. Louisville & Nashville Railroad Company, 213 U. S. 175, 191 (1909); Greene, Auditor et al., Constituting The Board of Valuation and Assessment for the State of Kentucky et al., v. Louisville & Interurban Railroad Company, 244 U. S. 499 (1917); Chicago Great Western Railway Company v. Kendall, Gover-

nor of the State of Iowa, et al., 266 U. S. 94 (1924); Hurn et al. v. Ourster et al., 289 U. S. 238 (1933).

As already said, the decision in favor of the plaintiff was given, not on the constitutional ground of discrimination, but on the invalidity of the assessment under the law of New Jersey. A short statement of the formal setting of this portion of the case is relevant.

The complaint alleges that prior to October 1, 1940, plaintiff "deliberately and intentionally * * * established her residence and domicile in * * * [the] Territory of Hawaii * * *"; that on November 7, 1940, while residing there, defendant tax assessor of the Township of Hillsborough, in the County of Somerset, State of New Jersey, wrote her a letter directed to her at Duke Farms, Hillsborough Township, asking her to give a true account of her personalty as of October, 1940, for the purpose of fixing a proper assessment. On December 4, 1940, her attorney acknowledged receipt of the letter on her behalf stating she was not taxable in the Township with respect to personalty as she was not a resident of New Jersey.

On June 26, 1941, as a result of the application of one Horner, a resident and taxpayer and the collector of taxes of Hillsborough Township, the Somerset County Board of Taxation adopted a resolution that plaintiff was a resident of Hillsborough Township on October 1, 1939, and that taxable intangible personalty owned by her on that date and omitted from assessment for the year 1940 be assessed [fol. 159] against her in the sum of $60,054,424. A like resolution was adopted for intangible personalty owned by her on October 1, 1940, which had been omitted for 1941.

Resolutions were also adopted against plaintiff as trustee of the Duke Endowment for $161,886,014 omitted from assessment for 1940 and 1941. Certified copies of the resolutions and schedules annexed thereto were mailed to plaintiff at her home in Hillsborough Township, June 27, 1941, when she was advised that the next regular meeting would be held July 14, 1941. She did not appear but instituted suit on that day.

The assessments were made pursuant to 54:3-20 of the Revised Statutes of New Jersey, 1937, N. J. S. A. 54:3-20, which provides:

"The county board of taxation shall, by resolution, cause to be entered upon the tax duplicate a proper assessment

against any property omitted by the assessor. The board shall then give immediate notice of such entry and of the time and place of its next meeting to the owner of the property affected, and furnish a copy of the entry to the clerk or collector of the taxing district, who shall enter it on his tax list."

Following in the same section, and with no paragraph break, it is provided, "On the written complaint of the collector, or any taxpayer of the taxing district or of the governing body thereof, that property specified has been omitted in the assessment, the county board, on five days' notice in writing to the owner by the party complaining, and after due examination and hearing, may enter the omitted property on the duplicate by judgment rendered within ten days after the hearing * * *. Such proceedings may be brought within one year from the date when taxes on real property become a lien."

54:4-55 of the Statutes provides: "The county board of taxation shall, on or before April first in each year, cause the corrected, revised and completed duplicates, certified by it to be a true record of the taxes assessed, to be delivered [fol. 160] to the collectors of the various taxing districts in the county, and the tax lists shall remain in the office of the board as a public record."

If the assessments here were made under the first above quoted procedure, R. S. 1937—54:4-55, N. J. S. A. 54:4-55, which requires all revisions of tax lists to be made on or before April first in each year, would seem to invalidate the assessments since they were made in June. If made under the second above quoted procedure requiring five days' written notice and a hearing, they were likewise erroneously made as the Board did not conform to the specified requirements.

Appellants urge, however, that under R. S. 1937—54:4-58, N. J. S. A. 54:4-58, and 54:4-59, N. J. S. A. 54:4-59[1] (the

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[1] "54:4-58. Tax, assessment or water rate not set aside for irregularities or illegality.

No tax, assessment or water rate imposed or levied in this state shall be set aside or reversed in any action, suit or proceeding for any irregularity or defect in form, or illegality in assessing, laying or levying any such tax, assessment or water rate, or in the proceeding for its col-

remedial statutes) irregularities in proceedings will not avoid the payment of taxes if in fact they are owed. Conover v. Honce, 46 N. J. L. 347 (1884); State ex rel. Saunders v. Morris, Collector, etc., 48 N. J. L. 99, 2 Atl. 666 (1886); Muscanetcong Iron Works v. Netcong et al., 90 N. J. L. 58, 99 Atl. 914 (1917); Manistee Iron Works Co. v. Raritan T. P. et al., 12 N. J. Misc. 143, 170 Atl. 39 (1934); Ridgewood Elks Holding Corporation v. Village of Ridgewood et al., 127 N. J. L. 295, 22 A. (2d) 266 (1941).

But in the latest New Jersey decision upon the subject, Duke Power Co. v. State Board of Tax Appeals et al., 129 N. J. L. 449, 30 A. (2d) 416 (1943), aff'd 131 N. J. L. 275, 36 A. (2d) 201 (1944), it was stated that the remedial [fol. 161] statutes have not been a substitute for proper assessment, the court adding that they have been applied "only in instances where property has been omitted by the assessor or has been assessed in the name of one other than the true owner. Musconetcong Iron Works v. Borough of Netcong, 90 N. J. L. 58, 99 A. 914; Manistee Iron Works v. Raritan, 12 N. J. Misc. 143, 170 A. 39. But they do not apply where the statute for the addition of property omitted from the assessment is not complied with. Mitsch v. Riverside, 86 N. J. L. 603, 92 A. 436; Shillingsburg v. Greenwich, 83 N. J. L. 129, 83 A. 644."

The appellants attack the quoted statement as dictum pointing out that it was proved that the property sought to be taxed was found by the court not to be subject to taxation in New Jersey. Such was one ground for the

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lection if the person against whom or the property upon which it is assessed or laid is, in fact, liable to taxation, assessment or imposition of the water rate, in respect to the purposes for which the tax, assessment or rate is levied, assessed or laid."

"54:4-59. Court to amend and fix amount due.

The court in which any action, suit or proceeding, is or shall be pending to review any such tax, assessment or water rate shall amend all irregularities, errors or defects, and may if necessary ascertain and determine the sum for which the person or property was legally liable and by order or decree fix the amount thereof. The sum so fixed shall be the amount of tax, assessment or water rate for which the person or property shall be liable."

decision, no doubt. But the decision was squarely rested on both the non-taxability of the property and the erroneous nature of the procedure. We see not the slightest reason for supposing that the court did not mean just what it said when it rested its decision on both points.

There was filed, in the District Court, a supporting affidavit executed by counsel for the plaintiff. The appellant criticizes the document for lack of conformity to Federal Rules of Civil Procedure 56 (e), 28 U. S. C. A. foll. § 723c. Portions of the affidavit do not conform to the rule. But disregarding them, there is still sufficient in the "entire record" upon which the District Judge based his decision, to bring the case within the holding of the Court of Errors and Appeals in the Duke Power case and to support the decision reached.

The judgment of the District Court is affirmed.

A true Copy:

Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 162] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8780

DORIS DUKE CROMWELL, Individually and as Trustee of the Dike Endowment,

vs.

TOWNSHIP OF HILLSBOROUGH, Somerset County, N. J., and Christopher G. Horner, Collector of Taxes of the Township of Hillsborough, Appellants

Present: Parker and Goodrich, Circuit Judges, and Kirkpatrick, District Judge

On appeal from the District Court of the United States, for the District of New Jersey

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel. On considera-

tion whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

By the Court, Goodrich, Circuit Judge.

May 9, 1945.

Endorsements: Order Affirming Judgment. Received and Filed May 9, 1945. William P. Rowland, Clerk.

[fol. 163] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendices to the Briefs of Appellants and Appellee, as constituting the portions of the record before this court at argument; and proceedings in this court, in the case of Doris Duke Cromwell, etc. vs. Township of Hillsborough, et al., No. 8780, on file, and now remaining among the ecords of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 30th day of July in the year of our Lord one thousand nine hundred and forty-five, and of the Independence of the United States the one hundred and seventieth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 164] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy, Mr. Justice Jackson, and Mr. Justice Burton took no part in the consideration or decision of this application.